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October 1993

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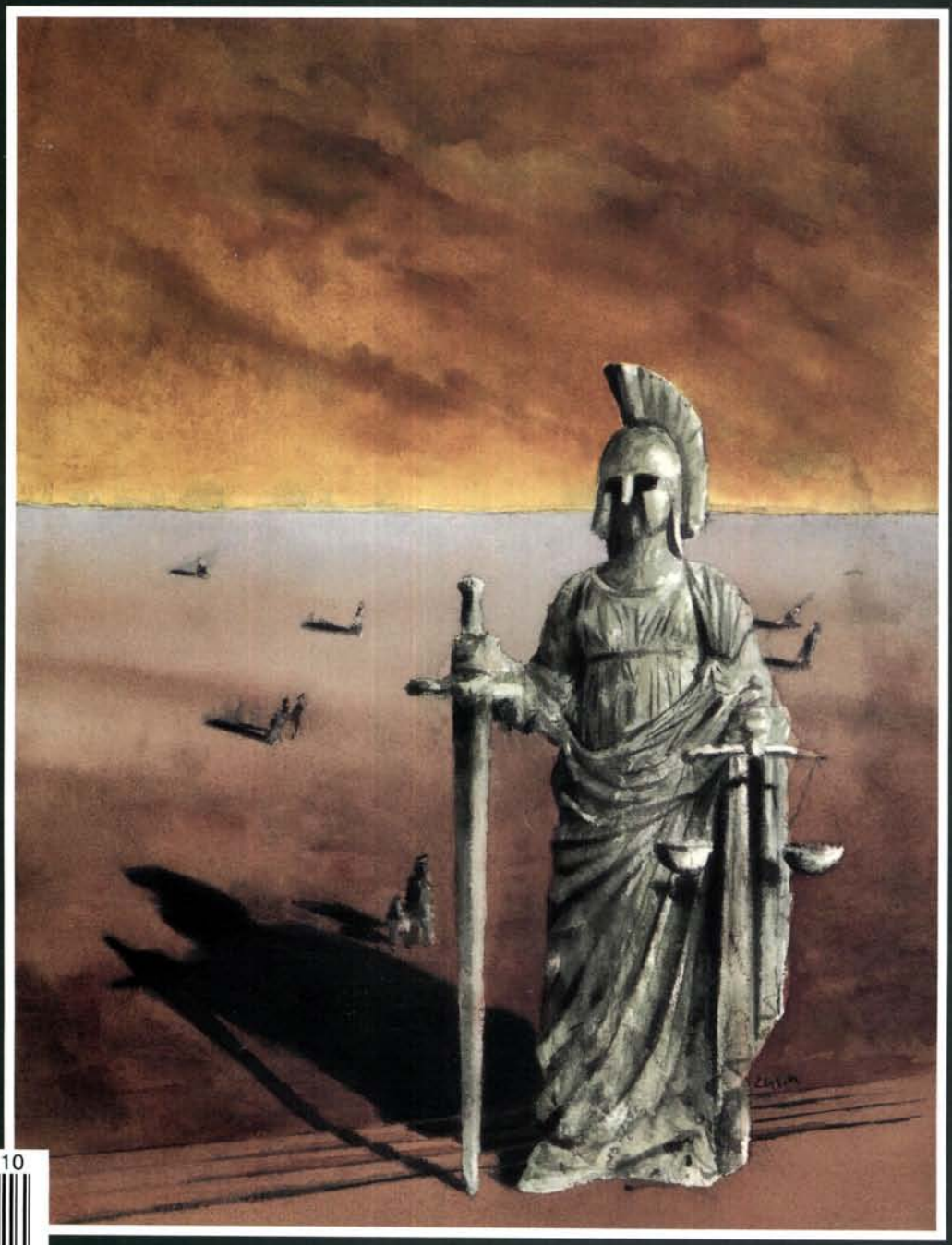

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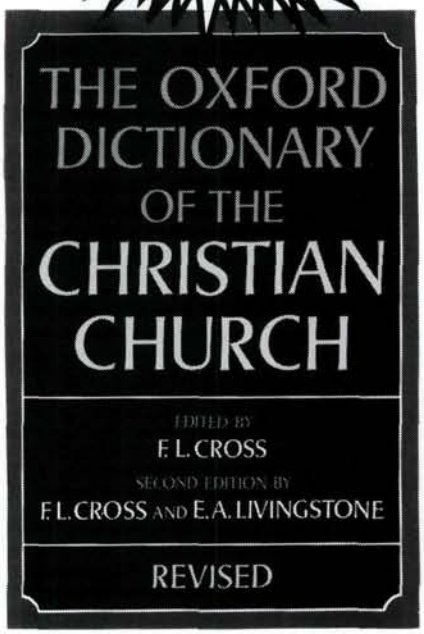

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Chronicles
A MAGAZINE OF AMERICAN CULTURE

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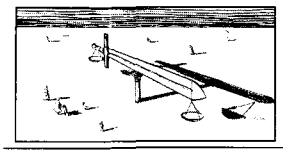

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A MAGAZINE OF AMERICAN CULTURE

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On 'Judicial Activism'

Samuel Francis ("A Perpetual Censor," July 1993) carefully criticizes the dubious "substantive due process" doctrine. But he errs repeatedly in his facts and analysis, not least in counting me among the doctrine's adherents.

Francis correctly criticizes judicial activism of the sort that creates constitutional rights out of thin air. But he ignores the even more pernicious judicial activism that reads rights *out* of the Constitution. Among these are the "privileges or immunities" of citizens protected by the 14th Amendment against abridgment by state government, a protection nullified by the Supreme Court in the 1872 Slaughterhouse Cases.

Foremost among these privileges or immunities was economic liberty, the basic right to pursue a business or trade. The 1872 challenge was not to the health or safety provisions of the Louisiana slaughterhouse law, but rather to the bribery-induced imposition of a monopoly that needlessly destroyed competitors' livelihoods.

No one can seriously maintain that the ubiquitous restraints on economic liberty that are Slaughterhouse's contemporary legacy are expressions of "community" desire. They are promoted by special-interest groups and enforced by unelected bureaucratic agencies—precisely the evils the 14th Amendment's equal protection and due process clauses were designed to constrain.

For better or worse, the judiciary is the last refuge for individual rights against government tyranny. That the left has abused this forum is no argument against those who would restore the judiciary's intended role as a primary bulwark for liberty.

—Clint Bolick
Institute for Justice
Washington, D.C.

Dr. Francis Replies:

Mr. Bolick conveniently neglects to specify any of the occasions on which I "err repeatedly in [my] facts and analysis." I understand that it is Mr. Bolick's *opinion* that the Slaughterhouse Cases of 1873 (not 1872, as he twice erroneously writes) nullified economic liberties and that it is his *opinion* that the 14th Amendment guarantees these liberties. But with all due respect to Mr. Bolick, contradicting his opinions does not necessarily constitute an error of fact or reasoning.

Mr. Bolick's response strikes me as bizarre. The 5-4 decision in the Slaughterhouse Cases is conventionally held by legal historians to be a narrow rejection of the doctrine of substantive due process. Thus, Melvin Urofsky writes, "In 1873, the Supreme Court almost adopted substantive due process in the Slaughterhouse Cases," and Loren P. Beth writes of Slaughterhouse that it was "the first case seriously to introduce the idea that due process of law could be applied to the substance of laws rather than merely to legal procedures," that had the minority in the case prevailed, their victory "would have made the [14th] Amendment a bill of rights against the states, enforceable by the national government, which is in effect what it has now become anyway." It makes absolutely no sense for Mr. Bolick to deny that he is among the adherents of the doctrine of substantive due process and in the same breath advocate the reversal of Slaughterhouse for the same reasons that the minority on the Court dissented.

Mr. Bolick can't have it both ways. He can't say, in one paragraph of his letter, that he doesn't agree with substantive due process and also say, in the next paragraph, that he thinks the 14th Amendment strikes down state and local legislation on the grounds of substantive due process. Nor can he condemn "judicial activism" if at the same time he supports the broad interpretation of the 14th Amendment that creates substantive due process and makes judicial activism possible (indeed, inevitable).

I will bow to Mr. Bolick's expertise on why states and localities choose to enact certain laws. Unlike him, I am not prepared to second-guess the interests, needs, norms, and wishes of communities of which I am not a member, and also unlike him, I am not prepared to conscript the power of the federal government to impose my own preferences on these communities when their

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preferences conflict with mine. The point, however, is that despite the existence of imprudent or unjust local and state laws that restrain liberty, there are many legitimate, just, and prudent reasons why communities might wish to enact legislation that reflects local circumstances and conditions—for the protection of public health, morality, safety, etc.—and these may well circumscribe "economic liberties." Again, unlike Mr. Bolick but more like the Framers and most Americans today, I do not subscribe to the notion that economic relationships determine political and cultural relationships or that they are the principal or sole criterion by which the public good should be measured.

Nor, finally, do I agree with Mr. Bolick that "the judiciary is the last refuge for individual rights against government tyranny." The proper function of the courts is to protect, not "individual liberties," but the rule of law, which is not always the same thing. The judiciary, Mr. Bolick might someday discover (most Americans to their rue have already done so), is part of the government and the least representative and responsive part of it. When the judiciary is empowered by ideologues to enforce their private obsessions, it is at least as great a danger to communities and persons, to law as well as liberty, as any other organ of the state.

CULTURAL REVOLUTIONS

POOR DENNY'S. The South Carolina-based company, with 1,600 "always-open" family restaurants, has been blindsided. After years of serving cheap, decent meals to working Americans, it is under a politico-racial attack. The aggressors are the usual suspects: the central government, the national media, civil rights leaders, and a lawyer, Guy Saperstein, from Oakland, California.

A New Age nephew of Harlem Globetrotters founder Abe Saperstein, Guy consults a psychic on his former lives as a woman, according to the *Wall Street Journal*, which otherwise likes him. How thrilling, in the eyes of the *Journal*, that Saperstein is a legal legend (which tells us all we need to know about the American Bar). He's become rich and famous by draining millions from middle-class, mostly Southern and Midwestern businesses through civil rights lawsuits.

Saperstein claimed Denny's was racist in a class-action suit earlier this year, and the search for plaintiffs began. Accompanying it was an anti-Denny's press campaign, stoked by our media masters because Denny's is Southern and a little old-fashioned and features charming if cranky waitresses, mostly white, who call you "honey."

The first publicity stunt involved a table of uniformed Secret Service police. They claimed they'd gotten slow service at a Denny's in Annapolis, Maryland, because they were black. When they complained loudly, the waitress is said to have "rolled her eyes." Hate crime! Most customers would respond to poor service—if it was that rather than crowding caused by a presidential visit to the Naval Academy—by leaving no tip or avoiding the restaurant in the future. Most people wouldn't sue. But that's exactly what the federal cops did.

There's no law telling restaurants to serve blacks within a certain time span (yet). So the agents used a familiar nightstick: the Civil Rights Act of 1964. This law, which legalizes trespassing on other people's property and rewards the trespasser if the owner protests, turns every restaurant into a federally supervised "public accommodation."

With the cross burning before their eyes, the Racism Industry went to three shifts. In Glen Burnie, Maryland, a black woman brought a federal discrimination charge against a Denny's because she found a foreign object in her hashbrowns. Another human rights violation. Then a 130-member black children's choir, plus sponsors and other adults, rolled up in three buses to a Denny's in northern Virginia at 11:00 p.m. on a Sunday night and demanded service. The manager politely explained that there would be a long wait, since he had only one cook and two waitresses on duty at the time. He suggested that a bigger Denny's down the road might be able to help, but it was in the same situation. Racism! "We feel like if we had been a huge group of white people on buses, they would have done whatever they could . . . [to] accommodate us," said Anita High, executive director of the choir, who promptly filed a suit.

At the same time, the Justice Department was induced to investigate a California Denny's for supposedly making some young black men pay in advance. If so, did this have anything to do with the restaurant's actual experience? Who knows? Who cares? Kill the manager.

"These charges against Denny's are escalating," said Jesse Jackson at an anti-Denny's rally. "They say they aren't happening, but they are lying. . . . Where there's smoke, there's fire." And where there's fire, there's Jackson with a gasoline can.

In an attempt to appease its attackers, Denny's fired the manager of the Annapolis restaurant and hired the NAACP to check its branches for slow service to blacks. (A problem: such checkers will have an incentive to act obnoxiously so as to discover "racism.") "We're in a very competitive business," Denny's vice-president Coleman Sullivan tried to explain. "Any thinking person would realize that we would not want to do anything to discourage anyone from coming to our restaurants."

Of course, but the civil rights apparatus must generate stories of white infamy to justify its existence. That's why Jackson and his ilk always suggest there's a conspiracy, that Denny's management, for example, secretly tells its employees: "We don't want any paying black customers, so let's harass them." Naturally, a federal judge would agree with Jackson. Judge Kenneth Hoyt called it "racism" when he and his wife had to wait "an inordinate length of time for service" at a Eureka, California, Denny's. Other discrimination complaints have come from Greenbelt and Gaithersburg, Maryland; Richmond, Virginia; Tampa and Ocala, Florida; and Shelby and Raleigh, North Carolina. As of this writing, Saperstein has signed up 32 black plaintiffs. Press accounts never mention it, but these

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class-action suits are orchestrated. Through the NAACP and similar organizations, blacks oppressed by ten-minute waits are alerted to the prospect of big money, and soon there are plaintiffs galore.

But even if Denny's is guilty of bad service, why should it be a federal case? In a free society, business rudeness is subject only to the sanction of the market, that is, loss of customer. For Denny's to be singled out by people who celebrate 2 Live Crew seems, well, uneven.

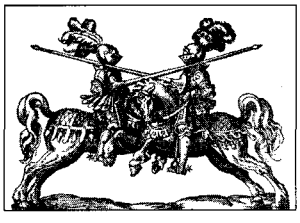
Thank goodness most customers have neither the ability nor the desire to sick fast-talking lawyers on those who irritate them. But the irritations of daily life are federal crimes if one belongs to an official victim group. And they're a lawyers' cash cow. Last year, Saperstein won $132 million from Shoney's, another Southern chain serving inexpensive family meals, because it acted as if freedom of association and contract were still legal in this country.

Shoney's, which is based in Nashville, had to institute hiring quotas for blacks and "multicultural education" for whites. Worse, the founder of the company, Raymond Danner—an entrepreneur who helped make dining out reliable and affordable—was forced to sell his stock and resign from the board. Saperstein's share of the loot: as much as $39 million. Denny's too will have to pay out many millions in legal fees and cash awards to the luncheon underprivileged. And it will have to establish racial quotas and indoctrination programs designed to make whites ashamed of their forefathers.

When America was free, the Raymond Danners prospered instead of the Guy Sapersteins. We'll know we've restored the Old Republic when Shoney's and Denny's can go about their own business and Guy can't afford a California psychic.

—Llewellyn H. Rockwell, Jr

LIBERAL ARTS



AND THEY CALL US THE STUPID PARTY!

R. Emmett Tyrrell, from his review in the February *American Spectator* of Rush Limbaugh's *The Way Things Ought To Be*: "Rush Limbaugh is quite obviously the greatest American since George Washington, and Limbaugh still has his own teeth. He has written a book that all Americans should read, and that his demented critics should have read to them by their probation officers or psychotherapists. This is liberal-bashing with bravura. It must not be ignored."

BIAS CRIMES will no longer be tolerated in New York City, say the proponents of the city's new "bias crimes" statute. Its sponsors call it one of the toughest such laws in the nation, and it will for the first time allow judges to award unlimited punitive damages to victims of bias attacks, as well as increase substantially the fines that the Human Rights Commission is permitted to assess.

The new law, to be sure, is largely symbolic, but a vote of 44-1 in the city council shows how difficult it is for elected officials to resist scoring political points of the motherhood-and-apple-pie variety. Under this statute, the list of protected categories includes the standard groupings of race, color, and creed, but also problematical ones like age, citizenship status, gender, disability, and marital status. Regarding the last, one is unsure whether it is the married, single, divorced, or widowed who are being preyed upon by criminals. The list of protected groups seems so comprehensive, in fact, that even some heterosexual white males will be covered, however inadvertently.

The whole notion of bias crime is spurious. It has never been explained why it is worse to attack a man because he is homosexual than to attack a man because he is wealthy or to attack a woman because she is beautiful. Why should the motivation of the act add to its heinousness?

Though the proponents of these laws gloss over the problem, the task of determining a criminal's motivation is fraught with uncertainty. Even if an attacker makes ethnic slurs during the criminal act, it does not follow that bigotry was his motive for committing the crime. And what about the ambiguous case in which a homosexual is victimized, not because he is gay per se, but because he appears weak, and thus an easy mark?

When crimes involving name-calling are punished more severely than ordinary crimes, victims will be tempted to fabricate charges of bias. We can expect the civil court system in New York City to become flooded with frivolous suits. We can also probably expect more cases like last year's infamous "sneaker polish" incident. In this 1992 version of the Tawana Brawley hoax, two black children in the Bronx claimed they were spray-painted white by a gang of Caucasian youths. In more innocent times, such an incident would have been considered a prank and been promptly forgotten. Mayor Dinkins, however, saw fit to hold a press conference for the purpose of denouncing it, and the story dominated the local headlines for that week. The police were unable to find any evidence of the alleged attack and finally decided that it had never happened.

A crime was recently committed in New York that illustrates the slippery slope we are on when we concern ourselves with the murky subject of a criminal's state of mind. A rabbi dressed in Orthodox garb was stabbed and seriously wounded by a Hispanic man. Though the assailant uttered no anti-Semitic slurs, the attack was nevertheless labeled a bias crime. The answer to the puzzle? The attacker made no attempt to take anything from his victim, apparently causing police to conclude that nothing *except* bias could have been the motive. According to the Orwellian logic of bias crimes, if the victim, in addition to being stabbed, had also been robbed, that would have made it a less serious, not a more serious, offense.

Considering the extent to which minorities now benefit from preferential treatment, there is also the likelihood that bias crime charges will be selectively brought by prosecutors. The Larry Brown case in San Jose, California, should surprise no one. Brown was a Caucasian youth who was attacked by a group of Vietnamese immigrants, one of whom shouted "white devil" before fatally shooting him. The case passed with barely a ripple in the mass media, and the local district attorney declined to press hate crime charges.

We are certain to be hearing much more in the future about bias crimes. After ruling last year in *R.A.V. v. St. Paul*

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that "hate speech" is protected by the First Amendment, the Supreme Court in June upheld the constitutionality of a Wisconsin sentence-enhancement law, the principal kind of criminal statute for dealing with crimes involving bias. These laws typically allow judges or juries to mete out a harsher penalty to a person convicted of an offense deemed motivated by prejudice. Twenty-six states now have sentence-enhancement laws on the books.

Chief Justice Rehnquist's opinion in the Wisconsin case seemed to gloss over the difficulty of ascertaining a defendant's state of mind, noting that judges have traditionally taken motive into account when deciding on a sentence. Though the High Court's decision was unanimous, the contentiousness of the issue was reflected in the fact that, while the A.C.L.U. supported the Wisconsin law, that organization's Ohio affiliate filed a brief on the opposite side. (An appeal by Ohio of a court ruling on its bias crime law is now before the Justices.) The Court's decision can also be expected to provide a boost to a federal sentence-enhancement law currently pending before Congress.

Given the apparent increase in recent years of crimes involving bias, the rash of new legislation is understandable. But whether they are criminal or civil laws, bias crime statutes are a bad idea. In New York City the liberal-dominated city government has shown little interest in combating garden-variety muggings, rapes, armed robberies, and murders. Legislators would do well to concern themselves with mandating harsher, swifter, and more certain punishment for all types of serious offenses, instead of with cheap grandstanding on the dubious issue of bias crimes.

—*Richard Irving*

PUBLIC TRUST DOCTRINE is the latest rage among law professors with a radical agenda. It challenges private ownership of natural resources and believes the state has the right to claim title to those resources in the name of the people. As Professor Robert I. Reis at the University of Buffalo School of Law notes, this elastic doctrine, though it begrudgingly acknowledges private property rights, also points toward their elimination: "It might be said that as the public trust doctrine expands to include contemporary environmental and social interests within the scope of its purview, the correlative private rights or future privatization of rights would be *precluded or significantly diminished.*" (Italics added.)

Professor Reis compares this doctrine to navigational servitude cases, in which public trust property is "not protected against a taking [by the state]." In the interest of protecting the environment, a landowner's right to just compensation for property offered under the due process clause could therefore be dismissed, since "the right of the people to the full benefit, use and enjoyment of national and natural resource treasures as trusts for the People" transcends private property guarantees. Here in shameless fashion is an attack on the Fifth Amendment to the Constitution and its provision that life, liberty, and property cannot be denied without due process.

What Reis and his radical colleagues have done is define property rights right out of existence. Like the Utopian Socialists who argued that all property belongs to the people—meaning the government—this newly formulated doctrine rests on the belief that public authorities are the best protectors against environmental damage. To protect the natural bounty we should not hesitate to eliminate private property.

This doctrine in effect overturns a thousand years of English Common Law. Despite what it says, the state assumes a dubious authority when it confiscates land without just compensation. In the Adirondack region of New York, the state has already acted arbitrarily. If the state has the power to alienate private property, then private property guarantees are meaningless and the very Constitution is rendered nugatory.

It is hard to believe that as the Cold War and the ideological battle between public property and private property that characterized this struggle are ending on the world stage, the same ideological battle is about to be fought in our domestic courts. This time it is not communism vs. capitalism, but environmentalism vs. the efficacy of private property. Yet the net result is the same: private property is under siege, this time by the self-appointed saviors of a pristine environment.

It may sound as if public trust doctrine represents the will of the people. The doctrine's name has a Rousseauean ring to it. But as in the phrases "power to the People" and "Peoples' Republic," when the word "people" is capitalized, individuals should tremble. What it usually means is that someone wants to erode individual rights and deprive people of their hard-earned rewards.

—*Herbert London*

"**EYE FOR EYE,** tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe," says the Holy Bible (Exodus 21:24-25). No criminal law ever written is simpler and more appropriate than these ancient Hebrew verses. Similarly, under Islamic law someone caught stealing can have his hand cut off. In the Old West, horse thieves were hanged from the nearest tree. During World War II, French women who slept with German soldiers had their heads shaven by the Resistance. And so on.

In the United States, persons who are convicted of such felonies as rape, murder, arson, embezzlement, burglary, drug dealing, extortion, child molesting, aggravated assault, etc., are more often than not back on the streets within a few months, whereupon they frequently repeat their crimes. The jails are jammed with criminals, and even the most liberal students of crime have all but given up on rehabilitation. Clearly, our present system of criminal justice is not working very well.

In order to expedite things and save a great deal of money, I have a few suggestions for more fitting punishments, which, though moderately cruel, are certainly not unfair. Instruction in these punishments should be made part of the curriculum in high schools, and legal executions, mutilations, and other punishments should be shown on TV as part of the evening news.

One, persons who kill people (by shooting, knifing, bludgeoning, strangling, suffocating, etc.) during a burglary or holdup shall be shot by a firing squad of the victim's relatives and neighbors on the day following conviction in the street nearest the place where the crime was committed. TV coverage is mandatory.

Two, rapists (first offenders) will have one testicle surgically removed. Second offenders will lose the second testicle and run a gauntlet of 100 friends of the victim armed with baseball bats. This could be done at Yankee Stadium or the Meadowlands.

Three, embezzlers, crooked politicians, and other white-collar criminals

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shall be placed naked in a glass cage in front of their former place of employment for one year and be made to pay twice what they stole.

Four, big-time drug dealers and drug smugglers shall be taken 50 miles out to sea in an Army transport plane and pushed out the door. TV tapes of this punishment would be shown in the United States as well as in Colombia, Mexico, Peru, Bolivia, Nigeria, etc.

Five, small-time drug dealers will be dropped by parachute onto a deserted island with a knife, some matches, and a supply of heroin, cocaine, and LSD.

Six, persons who burn down buildings for the insurance shall be branded with a large "A" on their forehead (with a red-hot branding iron) and be forced to pay for rebuilding the burned property. If life was lost as a result of the arson, the arsonist will be burned at the stake in the street in front of the burned building. The relatives of the victim(s) can arrange the kindling and light the fire.

Seven, all child molesters will be castrated.

Eight, hate mongers—people who are convicted of burning crosses on black people's lawns or painting swastikas on synagogues or other crimes of this nature—shall be punished as follows: cross-burners, Ku Kluxers, etc., shall have their foreheads tattooed with "I Hate Niggers" and then be dropped off in Harlem; despoilers of synagogues will be tattooed with "I Hate Jews" and then be dropped off in front of the JDL office.

Nine, loan sharks, depending on the size of their business, will be thrown into a tank at the New York Aquarium with: a) leeches and electric eels; b) piranhas; c) a great white shark at feeding time.

Ten, miscellaneous goons, extortionists, strong-arm men, muggers, con artists, etc., who prey on old or helpless or innocent people shall have the choice of being: a) strapped underneath a subway car for a month; b) handcuffed to a short-tempered gorilla at the Bronx Zoo for a month; c) used as a tackling dummy for the Pittsburgh Steelers for a month; d) hung by their feet from the top of the World Trade Center for a month (all with TV coverage). Second offenders would get the same treatment as big-time drug dealers (see number four).

Eleven, after release from prison, any convicted criminal who is caught with a handgun or knife shall have his weapon surgically implanted between the cheeks of his posterior for a period of five years.

Twelve, to be fair and to prevent unnecessary suffering, anyone convicted of a felony and wishing to avoid the stated punishment may elect to: a) be fired into orbit on the next unmanned space rocket; b) be buried alive; c) emigrate to the former Soviet Union.

All these punishments, which seem rather fitting, would be carried out within days of conviction to save time and immense amounts of taxpayer money. I have only mentioned principal crimes. Misdemeanors like running up $4,000-worth of parking tickets, spray-painting subway cars, vandalizing public buildings, shoplifting, etc., could, I believe, also be penalized in more memorable and effective ways. Any ideas, folks?

—Jack Little

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Explosive Book Reveals Truth About "Slick Willie" Clinton

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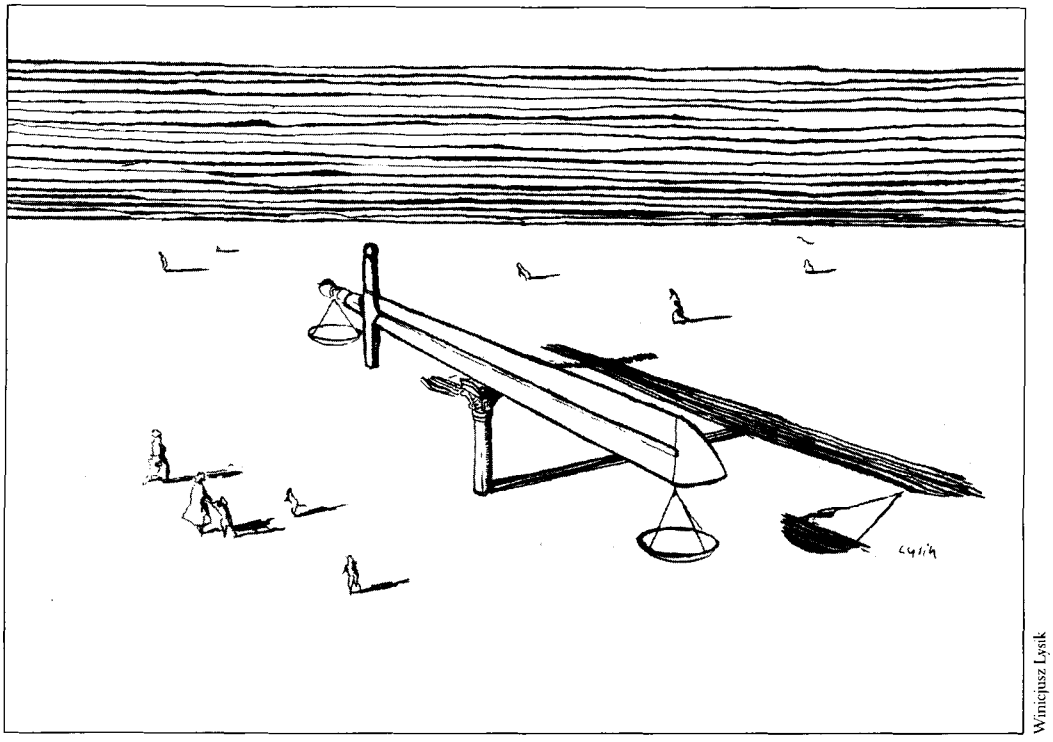

Wincjusz Lysik

Puppets and Their Masters

by Thomas Fleming

A naked boy runs down a crowded Italian street, chased by an angry old man. Grabbing the boy by the back of the neck, the old man shouts: "Just wait till I get you back home." The crowd quickly takes sides against the old man, and when the *carabinieri* arrive, they take him off to jail. The reader of the tale, however, knows that Gepetto is a kind and worthy man, who did not merely sire but actually created the boy, and that Pinocchio, although less than a day old, is on his way to becoming a juvenile delinquent.

The author of *Il Pinocchio* was a patriotic liberal who welcomed the *Risorgimento*, but he and the other patriots soon learned that Piedmontese rule meant foreign tax collectors, strange new laws, and the rifle-toting aliens of Victor Emmanuel's national police force, the *carabinieri* who drag an innocent father off to jail. They make other appearances in the story, when, for example, puppet *carabinieri* arrest first Pinocchio then Arlequino to feed the puppet-master's cook fire—as grisly an image of the modern state as one could wish.

As a matter of fact, the Italian government in the early 1880's had little power to intrude into households. Italy, although it was the homeland of enlightened penology (Beccaria) and scientific criminology (Lombroso) was slow to follow the example of Great Britain and the United States, the pioneers in child protection and juvenile justice.

Rearing children was once a relatively uncomplicated affair. A man and a woman got married, and in due course had children which they fed and clothed and disciplined according to the customs of their people. Relatives and neighbors reinforced parental discipline by telling the same stories, by quoting the same proverbs, and occasionally by admonishing or even beating the wayward child. The social rituals and institutions of the tribe, so far from undermining families, strengthened the authority of parents and—where it was necessary—supplemented their deficiencies.

Parents were unconstitutional monarchs within the household, with a comprehensive authority that often approached the Roman father's *patria potestas*. Despite the erosion of that authority, parents still retain a theoretical right to control their child's upbringing. Up to a point they may supervise his diet and activities, select a school, punish transgressions, and attempt to impose moral or religious instruction. Even today in some states parents may be held liable for torts committed by their minor children, if the children were acting as the parents' agent, entrusted with a dangerous or potentially dangerous instrument, or acting with the parents' connivance or consent. Parents can still claim a child's wages, which can also be claimed by the parents' debtors.

These vestiges of parental responsibility survive like the tip of Mount Ararat looking out upon the deluge that has drowned the works of sinful man. The once-sovereign family, like the

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sovereign state of Virginia, is now become an arm of the state, capable of exercising its privileges only so long as it does not run afoul of the higher authority from which it draws its legitimacy.

In earlier times, a parent's responsibilities were coextensive with his rights, or rather the claims of blood required both parents and children to fulfill their duties to each other. Families were responsible for maintaining the child, for protecting him from harm, and—in earlier or unsettled times—for taking vengeance against those who hurt or killed him. Today, vast legal systems in Europe and North America see to it that the man who rapes and murders a child is temporarily incarcerated in a mental institution to protect him from the parents' vengeance, and of the 50 American states it is only Louisiana that requires parents to include children in their wills.

Until the Civil War, American households were still, by and large, fortresses that could shut out the world. When examples of disciplinary severity and excessive punishment were brought to trial, the usual result was an affirmation of parental rights. At the end of the last century, the North Carolina Supreme Court overturned a lower court that had convicted a father of assault and battery, arguing that the application of the "cruel and unusual standard" would

> subject every exercise of parental authority in the correction and discipline of children—in other words, domestic government—to the supervision and control of jurors . . . . [S]uch a rule would tend, if not to subvert family government, greatly to impair its efficiency, and remove restraints upon the conduct of children . . . . [I]t would open the door to a flood of irreparable evils far transcending that to be remedied by a public prosecution.

The first child protection laws were devised by well-meaning English statesmen who wished to save the lives of children. Beginning with Peel's Health and Morals of Apprentices Act (1802), Parliament passed a series of acts to protect working children. The first blow against family integrity was not struck by the politicians who passed child protection statutes but by a social and economic system that drove mothers and children from the sanctuary of their homes, not into the marketplace but into the bowels of mines and factories.

In the United States, the frontier acted as a safety valve that encouraged the poorer classes to trek westward in search of new land. In the older parts of the country, however, industrialization and proletarianization proceeded along English lines. Deteriorating social conditions were exacerbated by the arrival of non-English immigrants. The good Yankees were terrified of Irish Catholics, whose children needed to be Americanized, i.e., protestantized and indoctrinated into habits of thrift, diligence, punctuality, and above all sobriety. These fears and aspirations were translated into legislation: compulsory school attendance laws and agencies designed to "save" potentially "delinquent" children—an elastic term that ran the gamut from criminal to shiftless—by removing them from unsuitable homes.

One key to the process of children's liberation is the concept of *parens patriae*, which can be used to justify state intervention not just in cases of real abuse but even when the choice is only between good and better environments for the child. The concept arose in the English chancery courts that dealt with cases of orphans. As parent of the nation, the king regarded himself as the foster parent of last resort. In a monarchy, where citizenship means personal allegiance to a personal ruler, *parens patriae* is a limited concept that could not be broadened to justify the state's assumption of power over all children. In a modern state, however, the bias is all against particular rights and immunities and in favor of generalized rules that apply to all. Pass a law aimed at aliens or the mentally defective, and it will some day be used against the native-born and normal.

In the United States, *parens patriae* was used to justify the creation of a juvenile justice system. In earlier times, although children over the age of seven might be tried and punished as adults, judges and juries were typically lenient in all but murder cases. In 1899 Illinois passed a statute, widely imitated by other states, establishing a special system for youthful offenders, who were to be tried and punished separately from adults. Since they were now not being treated as criminals, children and adolescents were no longer possessed of constitutional guarantees of due process. The object of juvenile justice was not, after all, the punishment of a criminal but the rehabilitation of a delinquent. For his own good, the youthful offender was removed from undesirable homes and placed in correctional facilities where he learned to mend his ways.

In the absence of a clear, inflexible rule, the courts are free to apply the highly subjective notion of 'best interests,' not only in choosing one of two parents but even in choosing between natural parents and an alternative.

In the course of this century, the powers of the juvenile justice system were considerably broadened to encompass comparatively minor infractions. At the same time, the courts and state agencies began to operate on the assumption that they, rather than parents, could be relied upon to determine a child's best interests. Parents may be supervised, instructed, counseled, and monitored for failing to live up to the state's definition. The ultimate sanction is to remove the child from the home.

The basic fact of children's lives is their dependency—a condition that is material, moral, and legal. Most children do not, indeed cannot, provide for the necessities of shelter, food, and clothing. Morally, they are not even responsible. Since their character and judgment are incompletely developed, they must rely on the guidance or supervision of their elders to teach them how to discern right from wrong.

Parents, by virtue of conceiving and begetting a child, naturally assume the role of guardian without any interference from the state. The problem of custody did not arise except in cases where the family integrity was fractured by death or divorce. If both parents died, their offspring usually went to live

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with the closest relatives who were willing and able to take on the responsibility. In a case of separation or divorce, the assumption of Anglo-American law was that the child should remain with the legal head of the family, that is the father.

In one sense the tradition of paternal custody, especially when strengthened by statute and ideology, is a reflection of the Anglo-American patriarchy that was buttressed and shored up in the centuries following the Reformation. More fundamental, perhaps, was the legal identification of the family with its head. In refusing to recognize the mother's claim to her children, judges were not so much siding with the father as they were declining to intervene. In the second half of the 19th century, however, American legislatures and judges began to reverse this tradition, granting women, first, equality in matters of custody and, later, superiority.

There are several reasons for the change. Social and economic developments had led to the creation of a "separate spheres" doctrine, which held that men were competitive, aggressive warriors who entered the marketplace to earn incomes for the family, while women, endowed with a caring and nurturing nature, were better suited to rearing children, cultivating the gentler and finer arts, and nursing the sick and infirm. In this view, children naturally belonged with their mothers, to whom they are typically more attached.

On the other hand, state laws tended to emphasize the rights of women. The Kansas constitution of 1859 provided "for the protection of the rights of women" in matters of property and "for their equal rights in the possession of their children." Oregon's equal custody statute of 1880 bore the significant title "An Act to Establish and Protect the Rights of Married Women." The effect of these laws—and the spate of court cases that ended up awarding children to mothers—was twofold. The mother—so long as she was not an adulteress—was routinely regarded as more fit to serve as guardian of a couple's children, while the father was expected to pay for the support both of his children and of his divorced wife. But a more important change had also taken place. From now on, the state was in a position to judge the fitness of parents and to select one as the guardian. The putative "best interests" of the child became the standard, rather than a rule of blood or even a rule of law, since the rights of the parents would no longer be the basis on which custody was determined.

In the absence of a clear, inflexible rule, the courts are free to apply the highly subjective notion of "best interests," not only in choosing one of two parents but even in choosing between natural parents and an alternative. Of course, there are limits to what the state can do. It is not yet possible, for example, to transfer custody from a pair of merely adequate natural parents to a socially superior couple who wish to adopt a child. This was the significance of the Baby Jessica case so widely misreported in the popular press.

An unmarried Iowa woman, Cara Clausen, gave up her baby for adoption to a Michigan couple, Jan and Roberta DeBoer. The mother, unmarried and estranged from the child's father, Daniel Schmidt, who was never told the facts, induced a current boyfriend to resign paternity rights he did not in fact possess. Reconciled and married, Daniel and Cara Schmidt sued for restoration of their child on the obvious grounds that the father had been unjustly deprived of his rights.

The facts of the case were simple, and the courts should have given an immediate judgment to the natural parents. This decision, however, took two years to reach, during which time the adopting couple was able to win a decision in a lower Michigan court on the basis of the child's "best interests"—a ruling unanimously overturned on appeal.

Justice, albeit delayed, was done in this case, but that cannot be said for the "Home Alone" case in which an Illinois couple were prosecuted for leaving their daughters at home while they went on vacation. The parents were admittedly callous and imprudent, but they broke no law, and the children, who were to all appearances healthy and well brought up, had not been harmed. Many children today are routinely left at home while parents are working, and in earlier periods of American history farm families were sometimes compelled to leave young children at home for days and even weeks. The case was eventually settled by plea bargaining, the details of which have not been made public. The couple, in return for getting their children back, agreed to a term of probation and 200 hours of community service, as well as electronic home monitoring. In the event, the couple preferred to give up their daughters.

In other words, for committing offenses that were not even criminal, the parents were hounded and blackmailed into surrendering their children. Ironically, one key argument used against the parents was that the girls had been traumatized by the experience, but it was the experience not of being left at home but of being forced to testify against their parents in a trial that was the object of as much media attention as a Stalin purge trial.

Big cases, once they have been vulgarized in the *Chicago Tribune*, lead to hasty lawmaking, and Illinois legislators, in the wake of the "Home Alone" case, rushed to criminalize short-term abandonment. The same lawmakers, overreacting to a highly publicized case of a mentally defective mother who murdered her child, hastily amended the Illinois Juvenile Court Act and the Children and Family Services Act to make it easier for the state to remove children from the custody of parents suspected of abuse. In Illinois—as in most (perhaps all?) states—the burden of proof has been on the state, because the fundamental assumption was that it was in the child's best interest to live, wherever possible, within an intact family or at least with a natural parent.

That assumption appears to have been weakened or even eliminated, and Illinois' child protection czar—the "inspector general"—will possess special powers to insure the best interests of Illinois children, and it is "the best interests"—a phrase repeated like a drumbeat throughout the new act—that take precedence over family integrity or parental rights.

Parens patriae has not gone unchallenged in the courts, and the doctrine was dealt an *apparently lethal* blow by the Supreme Court's decision *In re Gault*. This famous case concerned the misdemeanors of a 15-year-old boy, Gerald Gault, who was accused of making obscene telephone calls to a neighbor lady. Since Gerald was already on probation for accompanying a friend who snatched a purse, the Arizona juvenile authorities acted quickly to declare Gerald a delinquent minor. In their appeal, which went all the way to the U.S. Supreme Court, the Gault parents argued that they had not received either sufficient notice or due process.

There is no doubt that both in this case and in many other cases, the juvenile courts run roughshod over their young clients. The parents were not even informed of the nature of their son's supposed delinquency and were given no time to prepare a defense or hire counsel. In a far-ranging decision, the

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Fortas Court overturned the original judgment. Writing for the majority, Justice Abe Fortas delivered a stinging rebuke both to juvenile justice procedures and to *parens patriae*. But instead of confining himself to a defense of the parental rights involved, he concluded that minors possess the same constitutional guarantee of due process as adults. "Under our Constitution, the condition of being a boy does not justify a kangaroo court."

Fortas' decision has been hailed as a victory for parents in their struggle against the state, and from one perspective, the damage inflicted upon *parens patriae* may be regarded as a blow struck in defense of the family. Unfortunately, the more important and far-reaching implications of the decision have not been noted. If children are to be guaranteed due process under the Constitution, then presumably their rights are protected by other constitutional provisions. Since most children are not in a position to understand or to assert their own rights, this will mean, inevitably, that their constitutional rights will be protected by government agencies.

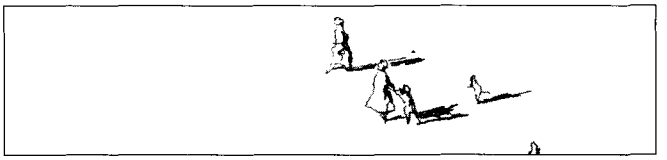
The road to tyranny is paved with human rights. The earliest advocates of natural rights did not include children. For Locke, only rational creatures could possess rights, and to be free in the law, a man needed to be able to understand the laws. "If this made the father free, it shall make the son free too. Till then, we see the law allows the son to have no will, but he is to be guided by the will of his father or guardian, who is to understand for him."

Locke, because of his obsession with rationality, could hardly ascribe rights to children, but in his effort to break the connection between the natural power of the father and the apparently artificial power of the king, he decided to undermine the natural power of the family. Hence, the power of fathers was no longer based on the mystical and interminable bond of blood or divine decree. Marriage, for Locke, was not the merging of two personalities but a covenant that could be dissolved once the children were grown. The object of childrearing was a rational and independent adult who would be free from paternal supervision. In redefining paternity and, therefore, parenthood, Locke made it possible for Rousseau and his followers to regard the family as little more than an instrument for nurturing and educating new citizens who, potentially, possessed all their natural rights.

But if natural affections are merely the result of habits, and if the object of parenthood is the child's independence, who has the responsibility to make sure that parents do not abuse their authority? Wilhelm von Humboldt took the logical next step. It is the parents' obligation, said Humboldt, to rear their children to maturity; at the same time, the children possess "all their original rights as regards their life, their health, their goods . . . and should not be limited even in their freedom, except in so far as the parents may think necessary. . . ." Some parents, however, may not take proper care of their children. In that event, it is up to the state "to provide for the security of the rights of children against their parents."

Humboldt's line of thought leads directly to the rights-based tyranny of the total state. So does the anarchic individualism of Herbert Spencer, who once argued for children's rights on the grounds that without rights, they were not citizens and no harm could be done by murdering them—a position he later retreated from. But, if children do have rights, they can hardly be expected to defend those rights all by themselves. Who will protect the rights of children from bigoted parents? Why, the courts of course, or "children's agents," that is to say, government agents working in the interest of children.

Most children's rights advocates are not calling for absolute political equality—although an adolescent contributor to the *Nation* recently demanded universal suffrage, regardless of age. But even if 12-year-olds were suddenly able to choose between Tweedledum and Tweedledee, their rights would not be any more solid and palpable than they are already. As economic and moral dependents of their families, they could only exercise their rights through the mediation of a force more powerful than that of their parents.



What rights, reasonably, can we expect to see bestowed upon minors? Before her elevation to the White House, Hillary Rodham wrote a highly influential essay laying the framework for a children's rights ideology that is superficially sensible but ultimately as subversive as the sexual liberation propaganda of the pederasts. Careful to define her terms, the First Lady observes that "a legal right is an enforceable claim to the possession of property or authority, or to the enjoyment of privileges or immunities." Since children currently possess few legal rights, the object is to transform their "needs and interests . . . into enforceable rights."

The President's wife used the analogy of condemning property. It took us centuries to recognize the propriety and justice of condemning property in the people's interest, and it has taken us even longer to recognize "that each family at some time needs a certain amount of assistance from the community or government to care for the needs of its members." When this view is, sooner or later, adopted, the state will possess—in the name of children's rights—a social power of eminent domain over families. On such a view, the state would not need evidence of life-threatening child abuse to justify removing a child from a household.

In the short run, the First Lady's position would justify state intervention wherever a family provided inadequately for the child's "needs," and since those needs are broadly construed to include sex education and sensitivity to minorities, no one outside Mrs. Clinton's own social circles would be exempt. But a broader construction of the doctrine is also possible. The greater social good might be improved if talented children were taken away from lower-class homes, if families of different races were compelled to swap kids, or if Republicans were forced to send their offspring to the ideological boot-camps her spouse set up in Arkansas. Why not? Once the state sets out to guarantee a right, it will destroy every obstacle that stands in the way of liberating the oppressed.

Pinocchio had to learn the hard way that, for a child at least, hell really is other people. His friends, the benevolent fox and the self-sacrificing cat, insist that their only happiness is in making other people rich. Plant your coins in the field of miracles and you will be rich overnight. Today, the descendants of that same fox and cat are running the social services and welfare programs of the United States, and anyone who is so woodenheaded that he believes their promises deserves to suffer, as Pinocchio suffered, until sadder and wiser he returned to the house of his father who loved him. c

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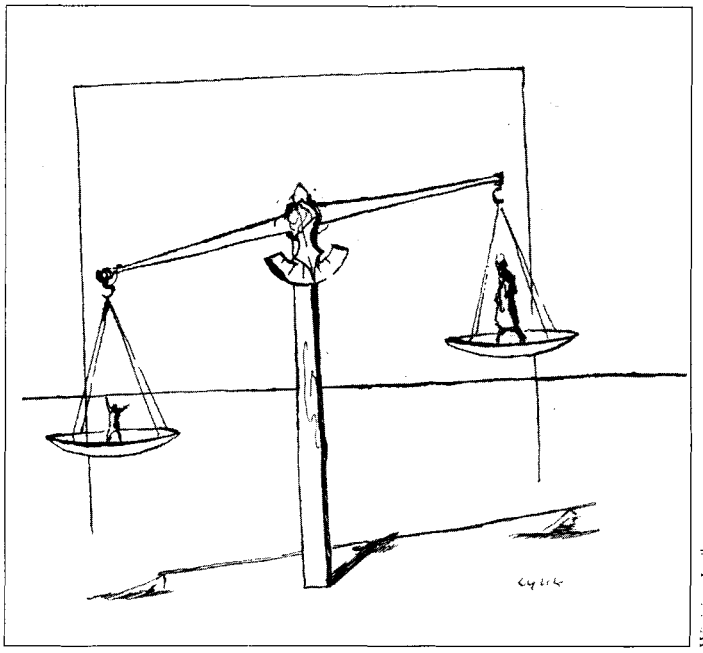
The Revolution in Civil Rights Law

by Jared Taylor



Wimiejusz Lysik

It has been nearly 30 years since the passage of the Civil Rights Act of 1964. By banning discrimination in employment and public accommodations the law was meant to minimize the role of race in the daily lives of Americans. Its result has been the opposite. The doctrine of "disparate impact" has had the astonishing effect of transforming laws that forbid racial discrimination into regulations that *require* it.

The shift from officially color-blind "equal opportunity" to a form of racial discrimination called "affirmative action" was not inevitable. What made this revolution in the laws possible was a combination of factors: ignorance about the nature of employment markets, unchallenged assumptions about the inveterate "racism" of whites, and—perhaps most important—the almost complete failure of whites to defend their own interests.

Today it is taken for granted that without civil rights laws there would be wholesale job discrimination against blacks. Is that really true? Was it ever true? In his 1992 book *Forbidden Ground: The Case Against Discrimination Laws*, Richard Epstein argues convincingly that antidiscrimination laws are not necessary and that the employment provisions of the Civil Rights Act of 1964 should be repealed. Professor Epstein's thesis can be simply summarized: if some prejudiced employers refuse to hire qualified blacks, the wage at which blacks are willing to work will fall. Unprejudiced employers will soon discover this wage difference and hire blacks at less than the prevailing rates. But if competent blacks can be hired for lower wages than whites, this will bid up the price of black labor to something equal or very close to the price of white labor.

In Professor Epstein's view, it was not the irrational prejudices of whites that kept blacks out of certain jobs in the pre-civil rights South. Government interference kept them out. It was government that instituted inferior schooling for blacks and passed Jim Crow laws to ban them from professions. Indeed, the very existence of Jim Crow laws suggests they were necessary. Blacks were kept out of professions by law because that was the only way to keep them out. Even Southerners of 60 or 70 years ago could not be counted on to pass up a competent carpenter or bricklayer simply because he was black. These laws reflected prevailing prejudices, but prejudices often had to be *forced* upon employers. Even at the height of slavery, white tradesmen had to resort to legal means to keep free blacks from taking away their work. An 1857 petition by whites to the Atlanta city council says, "We refer to Negro mechanics [who] . . . can afford to underbid the regular resident mechanics. . . . We most respectfully request [that the council] afford such protection to the resident mechanics." Even in the antebellum South, prejudice could not be counted on to keep professions white.

The 1896 case of *Plessy* v. *Ferguson* is infamous for having enshrined the doctrine of "separate but equal" facilities for whites and blacks. Long forgotten, however, is the fact that the Louisiana railroad that asked Homer Plessy to ride in the blacks-only car was *forced against its will* to do so by a state law

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requiring separate cars for whites and blacks. Left to itself, the railroad preferred the simplicity of carrying all passengers in the same cars. *Plessy* v. *Ferguson* therefore ratified the prejudices of Louisiana legislators, but it also legitimized the power of government to force racial discrimination upon businesses that did not want to discriminate.

Before the passage of civil rights laws, lax public order helped to force businessmen to discriminate. When employers and hotel-keepers tried to integrate their businesses—for purely economic reasons—neighborhood thugs might smash their windows or threaten violence. The police, who shared prevailing prejudices, looked the other way. People for whom prejudice had no economic cost (the neighborhood thugs) were permitted to force prejudice upon people for whom it did have a cost (business proprietors).

When the Civil Rights Act of 1964 banned discrimination it required many employers to do something they wanted to do anyway. It opened up important opportunities for blacks by doing away with Jim Crow laws, biased law enforcement, and a host of local regulations that *prevented* employment of blacks. All the new law should have done was sweep away this web of market distortions, but it did not leave well enough alone. Instead, it replaced one form of coercion with another. Jim Crow *forbade* certain business relations; antidiscrimination law *requires* them even when a participant is unwilling. The profit motive ordinarily keeps employers from indulging in irrational prejudices, but in genuinely free markets, they should be free to choose their employees for good reasons, bad reasons, or no reason at all. Some would argue that any racial discrimination that persisted even in a completely free market would still be so odious that government power should be used to stamp it out. However, that is not where the exercise of government power stops.

After passage of the Civil Rights Act of 1964, most cases of deliberate discrimination in employment disappeared. So quickly did intentional discrimination disappear that enforcement of antidiscrimination norms promptly turned to *unintentional* discrimination—acts that the layman would hardly recognize as discrimination at all. Within just seven years of the passage of the act, the doctrine of disparate impact—a doctrine never imagined by Congress—had already worked its way through the judicial system and been ratified by the Supreme Court.

In its 1970 *Griggs* v. *Duke Power* decision, the Court set aside discriminatory intent entirely and ruled that an employer could be held liable for discriminatory *effect* whatever his motives might be. Disparate impact works like this: if an employer decides that he will hire only high school graduates, and it can be shown that blacks are less likely than whites to have diplomas, then blacks have suffered a potentially illegal "disparate impact." It makes no difference if high school graduates of all races are treated with scrupulous impartiality. If the diploma requirement is more of an employment obstacle to blacks (or to Hispanics, or women, or American Indians, or any other protected group) than to whites, the employer must justify his requirement. If he cannot justify it—in court—he is guilty of illegal racial discrimination.

Until 1991, courts held that an employer had to prove that his job standard, even if applied in an entirely color-blind fashion, was a strict "business necessity." (The Civil Rights Act of 1991, which first codified the Supreme Court's disparate impact thinking into law, changes the rules slightly. An employment standard must now be "job related for the position in question and have a significant relationship to business necessity." Litigation will determine what these phrases mean.) Clearly, the only strict business necessity is rock-bottom minimum qualifications for the job. If, by raising his standards above bare necessity, an employer made it less likely that blacks would be able to meet those standards, he was guilty of discrimination because of disparate impact.

Disparate impact doctrine has outlawed many traditional practices. Until recently, most police and fire departments would not hire anyone who had been dishonorably discharged from the military. Since proportionately more blacks than whites are so discharged, questions about military records have a disparate impact and are therefore illegal. Likewise, employers may not investigate the credit histories of potential employees, even for jobs that require financial probity. Blacks have worse credit histories than whites, so a credit check has a disparate impact. In the name of nondiscrimination, employers are therefore shut off from useful information about potential employees.

Employers are also denied the results of standardized tests. Whites (and Asians) get better scores on *all* meaningful standardized tests than do blacks (or Hispanics). Tests therefore have a disparate impact, so an employer must show that a test measures only the abilities needed to do the job and nothing more. It is so expensive to devise specific tests for every job that most employers have abandoned employee testing. Although most Americans have never heard of it, the doctrine of disparate impact is a nightmare burden for American businesses. In our country today, it is *against the law* to hire the best possible work force *regardless of race*. The highest possible standards, no matter how equitably applied, produce a disproportionately white work force because whites are better qualified.

There are exceptions to this rule. Owners of professional basketball teams require that their employees meet the highest possible standards, with the result that nearly 80 percent of professional basketball players are black. These standards have a "disparate impact" on whites, but are permissible for two reasons: whites are not a protected class, and the standards meet the "business necessity" test. In other professions, the highest possible standards cannot be so easily tied to "business necessity," so if they have a disparate impact on nonwhites they are probably illegal.

It is the doctrine of disparate impact that explains why the question of quotas always hovers over any discussion of current antidiscrimination law. Only by having a work force that mirrors the ethnic makeup of the surrounding community—that is to say, by establishing quotas—can an employer be absolutely safe from liability. An employer with a disproportionately white work force can always be called on the carpet and forced to demonstrate that the hiring standards that produced the disproportion are *vital* to doing business. The circumstantial evidence of the composition of his work force—mere statistics—is sufficient to make him *guilty until proven innocent*. In no other judicial proceedings is an American citizen presumed guilty. Ordinarily, in order to get a suit-proof, multiracial work force, a company must establish hiring quotas. This generally means discrimination against whites, but since whites are not a protected group such discrimination is permitted. Ironically, although quotas are the only route to security, the word is in disfavor even among supporters of affirmative action.

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The Civil Rights Act of 1991 therefore forbids quotas, and its supporters point to this as proof that the act cannot lead to quotas. Alas, things are not so simple. It is as if an electric utility were forbidden to run its wires above ground . . . but were also forbidden to dig holes. Something the act forbids (quotas) is the only sure way to avoid something else that it forbids much more vehemently (disparate impact).

An illuminating illustration of the impossible demands that antidiscrimination law places on an employer is found in the history of the one exception to the disappearance of standardized employment testing. The General Aptitude Test Battery (GATB), versions of which have been used since 1947, has been widely popular for evaluating employee potential. Since whites get higher average scores than blacks, and since it is a *general* test not designed around the narrow requirements of a single job, in 1971 its use suddenly became an example of illegal disparate impact.

There was much dismay at its demise, since it was a thoroughly validated and useful test. In 1981, the Department of Labor salvaged the GATB by inventing a new way to score it. The raw scores of all test-takers were compared only with those of test-takers of the same race. Thus, if an Asian, a white, a Hispanic, and a black each got a raw score of 300, the black would be ranked in the 87th percentile, the Hispanic in the 74th, with the white and the Asian together in the basement in the 47th. This "race-norming" was kept secret from millions of test-takers and hundreds of employers. Only the adjusted percentile scores were reported to employers, who hired many blacks and Hispanics who had actually scored lower than white and Asian candidates.

Eventually whites got wind of race-norming and made enough trouble for the GATB to be retired once again in 1990, nearly a decade after being revived. Race-norming now has such a malodorous reputation that the Civil Rights Act of 1991 bans it just as it bans quotas. But in doing so the act forbids a clever and reasonably fair way to avoid disparate impact. Standardized tests were devised to avoid capricious employment decisions. Employers value them because they are such good indicators of future performance on the job. For this reason, despite the terrible publicity that accompanied revelations about race-norming, business interests lobbied earnestly to *keep it legal*. After all, as many sophisticated employers realized, disparate impact doctrine was a way of smuggling racial quotas into the workplace, and a race-normed GATB was one of the best ways to do it. Even if it forced companies to hire blacks and Hispanics who were less qualified than whites and Asians—just as quotas do—it at least allowed them to hire the *best* blacks and Hispanics.

Since race-norming and hiring quotas are illegal but racial quotas are the only sure way to avoid prosecution, an employer's hands appear to be tied. Fortunately, there is a loophole. Affirmative action "goals" are not merely legal, they are obligatory for government contractors and many state agencies. If "goals" are calculated in the same way as quotas and are always met, the circle can be neatly squared.

What happens to a company that is not shrewd enough to realize that in order to comply with today's "antidiscrimination" laws it must jettison the merit principle and carefully juggle the racial makeup of its work force? It finds itself with too many white employees, is successfully sued by the Equal Employment Opportunity Commission (EEOC) at taxpayer expense, and is forced to implement rigorous programs to make up for past "discrimination." A company that may never have discriminated against anyone can be ordered by a judge henceforth to discriminate systematically . . . against whites. All too often, this is what is behind news stories of lawsuits in which companies agree, "without admission of guilt," to make large payments to nonwhite employees and promise that a certain percentage of all new hires will henceforth be nonwhite. Clearly, the EEOC cannot put every American company under the microscope, and a great deal of "disparate impact" still goes unpunished. Nevertheless, current thinking is clear from the way enforcement agencies act. In one famous case, a white entrepreneur was sued for racial discrimination when he fired an incompetent black. He pointed out to the Illinois Department of Human Rights that 63 of his 83 employees were black, Puerto Rican, or Mexican, and that the replacement for the black he had fired was also black. The bureaucrats then reportedly asked him to prove that he had not hired so many minorities just to make it look as though he did not discriminate!

We live in an era in which one of the worst possible crimes is to subscribe to "negative stereotypes." However, there is one group about which the most reckless group calumny is not only permitted but encouraged. Reflect, for a moment, on what it means to punish disparate impact just as severely as blatant, back-of-the-bus discrimination. It means that in the eyes of the law there are thousands, no, tens of thousands of businessmen who, having had their bigotry forced underground, have never ceased to dream up ingenious ways to hold the black man down. They use job standards as a cover for racism. They use ostensibly race-neutral employment tests only to weed out blacks. They may even hire large numbers of nonwhites as a smoke screen to conceal their perfidy. Worst of all, they conceal their motives so cunningly that their ill will cannot even be *detected*. They can, however, be trapped by statistical analysis and then be held guilty until they *prove* their innocence. They must be constantly watched and hounded, since they will express their true Jim Crow nature at the first opportunity. As much as this may sound like caricature, it is nothing more than an explicit statement of the assumptions that underlie the doctrine of disparate impact. The massive investment in regulation, enforcement, vigilance, and self-righteousness that the race relations industry now represents can be justified only if whites are virulently and doggedly racist.

Of course, if whites were a tenth as "racist" as the current enforcement efforts assume they are, the white majority would never have passed the Civil Rights Act of 1964. Even if the act had been a freak concession to principles that most whites despised, there would have been a huge public fight against even the slightest shift from "equal employment opportunity" toward "affirmative action." There has been no such fight. Whites have not merely been silent in the face of government-mandated discrimination; they have been among the first to clamor for ever more pervasive forms of race-based preferences for nonwhites.

It is now more than 20 years since the doctrine of "disparate impact" completely rewrote American antidiscrimination law, yet there is not a single mainstream organization or political party that recognizes whites as having legitimate interests *as whites*. Those rare whites who object to racial discrimination against them are routinely dismissed as "racists." It is this astonishing disappearance of white racial consciousness that explains much that cannot otherwise be explained. It ex-

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plains why there has been virtually no outcry over the fact that laws specifically crafted to abolish racial discrimination are now used to require discrimination. It explains why preferences for blacks—for which some sort of case might have been made because of slavery—have, without a murmur of opposition, been expanded to include Hispanics, Asians, Eskimos, American Indians, Puerto Ricans (and even women), whose historical circumstances and presumed victimization are vastly different from those of blacks. Finally, it explains what may be the most unjustifiable form of "antidiscrimination" of all: affirmative action for nonwhite immigrants as soon as they set foot in America. If anyone doubted the complete disappearance among whites of organized efforts to protect their group interests, affirmative action for immigrants is surely proof.

The way in which antidiscrimination is defined and enforced therefore presents a remarkable irony: whites not only submit quietly to official racial discrimination, but because they have so little racial consciousness they permit themselves to be hounded and punished for "crimes" that only people with a strong sense of race are likely to commit. The extension of affirmative action preferences to all nonwhites—and not just the presumed victims of slavery—shows the true nature of today's "civil rights" movement. Righting injustices has little to do with it. It is mainly an attempt to advance the group interests of nonwhites at the expense of whites. It is a broad attack on whites (as whites) and is one in which many whites themselves have joined.

This situation cannot last. Injustice cannot be fought with injustice any more than discrimination can be cured through discrimination. If nonwhites continue to promote explicitly racial interests at the expense of whites, whites, too, will pursue explicitly racial interests. If governments continue to require discrimination against whites in the name of "equal opportunity," whites will increasingly resent not just nonwhites but their own government. Race has always been at the heart of our nation's greatest domestic conflicts. Current interpretations of civil rights law virtually guarantee a worsening of race relations and the likelihood of ever more damaging conflicts. ©

Old

by Laurance Wieder

Closer to the end, I always trusted
Life continues, though at times
The outlaw bands surrounded me
On horseback in the open plains,
Fired repeated shots
And no rock, no cave, no cliff nor cover near.
Since childhood, I have survived
Their godforsaken consultations,
A young man born to rule
Himself, and others. Now white hair
Wisps, my grip slack on the walking stick,
And people when they look at all
See baggy suit, large knuckles folded
One upon the other, don't quite catch
The name, the choice that made me
What I am.
I lift my head up
From the table doze. Late afternoon
In winter sunlight floods our benches
Anchored to the traffic islands.
My companions ply their canes,
Beat time while sitting, but I sing
Because I'm able: God
Of Israel, still twang
The evening string, my soul
Caught sweetly in the longer shadows:
Darkness swallows up confusion
Raking gravel smooth around the ruin.

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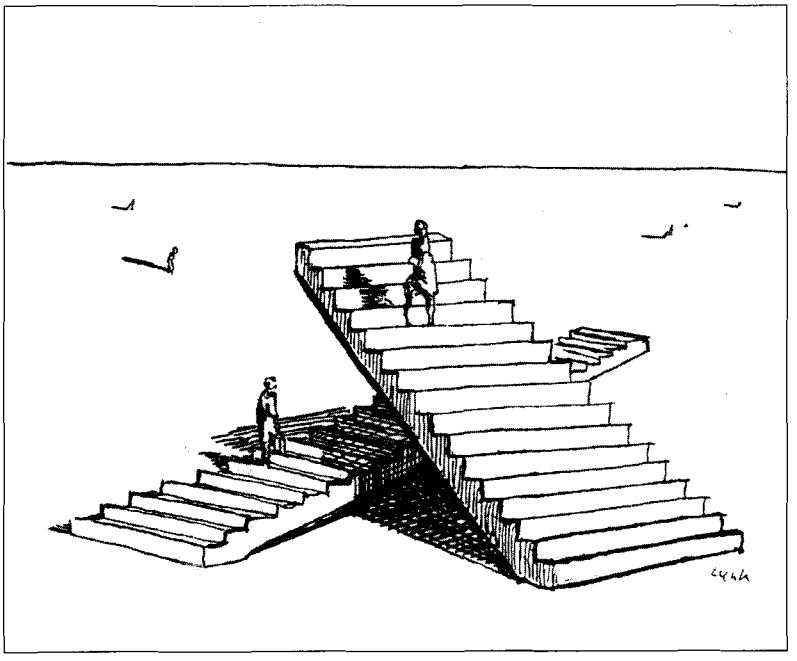
Hard Cases and Bad Law

The Feminist Legal Revolution

by Philip Jenkins



Winiejusz Lysik

During the next four years, the Clinton administration will appoint dozens of federal judges, in addition to (perhaps) two or three Supreme Court Justices. In the confirmation procedures for these individuals, issues of gender politics are likely to predominate. Abortion will obviously be one such question, as may sexual harassment, but we should also hear much more about other controversies based ultimately on perceived conflicts of interest between the sexes. We already know how conservative justices are interrogated on these matters; but we should also be familiar with the key questions that can appropriately be posed to a justice of liberal or feminist inclination.

For example, it would be proper to ask about cases involving women who allege they have been victimized by male suspects. In such cases, is the presumption of innocence vitiated by the race or gender of the accused or the victim? Should the burden of proof be transferred to the accused? Is it proper to impose severe penalties without due process of law? And should criminal law be so broadly defined as to leave it up to one individual to decide whether a crime has occurred, regardless of corroboration or proof? In short, what (if any) legal rights and protections should exist for men accused of victimizing women? These questions may seem absurd, but they have all been posed by numerous laws passed by American states as a consequence of the feminist revolution in legal theory that has occurred in the last quarter of a century.

The feminist movement in law is based on principles that are collectivist and authoritarian, and the statutes founded on these ideas involve a systematic violation of natural fairness and justice. Recent legislation has effected drastic changes in the commonly accepted principles of Anglo-American law and constitutional practice, although the "revolution" has so far received remarkably little criticism or even comment. In the 1990's, feminist theory will certainly cause a vast expansion of the scope of both civil and criminal law and produce new litigation on a scale that could overwhelm the existing court system. It may also provide the intellectual and political justification for some significant manifestations of judicial oppression.

Modern American feminism grew up in the shadow of the black civil rights movement of the 1960's, and that heritage is apparent in its emphasis on the suffering and violence believed to derive from gender-based inequalities of power. Similar too is the quest for solutions in the form of penal legislation to correct these perceived injustices. There is now a substantial body of feminist writing and research in the areas of crime, law, and justice, and there are many feminist academics studying these areas. As we might expect from the contemporary academic world of North America, it is extraordinarily rare to find dissident voices challenging feminist orthodoxies on these issues, and the literature generally speaks with one (monotonous) voice.

In the first decade of the new feminism, one major emphasis of the movement was on the crime of rape, which was presented as the moral equivalent of the lynchings inflicted on blacks in the segregation era. The antirape campaigns of the 1970's had a decisive impact on subsequent feminist belief and

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practice, and it is useful to summarize the views that developed on this subject. Rape was said to be an offense that results from the social distribution of wealth and power in a "patriarchal" society. The crime happens with enormous frequency, although official statistics record only a tiny handful of actual occurrences; and rape involves savage violence that often leads to death or serious injury of victims. In response to such a gross violation of the rights of half the human population, the justice system offers a parody of protection in the name of "due process" and objectivity, permitting trials in which the victim is effectively accused of having caused or provoked the attack.

We may sympathize with many of these claims. Reforms of the 1970's undoubtedly did contribute to making police agencies more sympathetic to rape victims and ending the obscene spectacle of defense lawyers examining every minor detail of a victim's previous sexual history, to the prurient delight of the media. Having said this, the use of the rape issue also established some far less desirable principles, such as the belief that women are subjected to extreme and frequent victimization to which the justice system is neither willing nor able to respond. This lethal violence could only be challenged by changes in the law and its enforcement, which in practice meant imposing quite draconian penalties, and doing so on the basis of evidence far weaker than had hitherto been demanded.

In particular, there now developed a belief, amounting to an unchallengeable orthodoxy, that stated women simply did not lie about such victimization—*never* lied, not out of personal malice, not from mental instability or derangement. This assumption places an almost insuperable burden of proof on an individual falsely accused in such cases, and subsequent measures have aggravated the situation. Canada is now proposing that a man accused of rape be required to show that he has taken all reasonable means to obtain the free and informed consent of the woman prior to sexual contact, regardless of prior relationship or marital status. Quite literally, the only defense against a rape charge in such a situation might well be a properly notarized pre-intercourse contract. There are even feminist lawyers who wish to revive the ancient offense of "seduction," permitting a woman to sue a man who has misrepresented himself to her in order to gain sexual access—effectively a demand for truth in sexual advertising.

Of course, the assumption of "believing the victim" greatly facilitated the workings of the criminal justice system, which had earlier faced the task of having to determine the guilt or innocence of suspected persons. Now it would be possible to assess the nature of and responsibility for the action solely on the basis of one testimony! No jurisdiction ever went quite so far in eliminating traditional standards of corroboration and proof, but some states went a good way in this direction. Many rape suspects wrongly convicted under such circumstances are only now succeeding in establishing their innocence with the coming of new forensic technologies for genetic testing.

The antirape campaigns were critical in shaping the feminist theories that have since transformed the laws on such matters as domestic violence, sexual assault, child abuse, and pornography. Here again, we find the same ideas, above all the notion of women being subjected to mass victimization, which can only be countered by emergency legislation that reduces or suspends suspects' rights. Only thus can victims be offered immediate protection or redress. The severity and scale of the threat is established by familiar rhetorical devices, including the use of bogus or inflated statistics (one woman in three will be raped in her lifetime; six million women are victims of domestic violence each year; and so on). This is normally achieved by stretching to the breaking point the definition of such crimes: for example, the domestic abuse figures include victims of such behavior as "progressive social isolation" and co-dependency, but the figures are presented as if they all refer to savage physical battery.

In addition, spectacular cases are publicized as if they are somehow representative or typical. Ideally, such cases should depict significant failures by the police or courts, resulting from an over-tender respect for the rights of an accused person. The argument then follows that women can only be protected if such archaic rights are bypassed or abolished, while new legal principles are established and backed by substantial criminal penalties. In all these debates, the issue of the victim's credibility becomes crucial, as so many of the alleged atrocities occur in intimate and family circumstances, in which the victim has been "sleeping with the enemy," perhaps over many years.

The workings of feminist jurisprudence can be observed from recent responses to the offense of battering, almost invariably perceived as violent behavior by a man toward his wife or lover. The feminist emphasis on domestic violence is a valuable rhetorical tool, which highlights the adversarial and occasionally lethal relationships that can prevail within the framework of married life. No less than the belief in widespread sexual abuse, the rhetoric surrounding domestic violence serves to discredit the "patriarchal" family and its relationships.

Traditionally, police probably did tend to treat "battering" as a type of domestic conflict into which the criminal law should not be brought except where absolutely necessary, and this underreaction may have led to unnecessary suffering. On the other hand, recent legal developments suggest that the pendulum might have swung too far in the opposite direction. Many jurisdictions now mandate that police arrest men suspected of domestic violence, even if the woman strenuously denies that such an act has occured. Moreover, the degree of assault required to qualify as "violence" is liable to considerable subjective interpretation.

Apart from any possible injustice involved, a convincing literature establishes that many men arrested in such circumstances are likely to return home and commit far worse violence against the woman they blame for their misfortunes. In other words, it is reasonably well established that the new laws are going to cause the deaths and injuries they seek to prevent; only the preservation of feminist orthodoxy in the face of the evidence permits the continuation of "mandatory arrest" policies. However, the research also shows that it is overwhelmingly poor and minority women who are likely to be attacked by men newly released from custody, and so academic feminists will probably not shed too many tears over this problem.

For feminists, both rape and domestic violence are offenses so serious that suspects are not entitled to the due process protections they would receive if charged with a lesser transgression, such as (say) arson, treason, or armed robbery. Much of the development here has come in the huge expansion of injunctions and restraining orders, highly discretionary devices long available to courts but now revived under feminist pressure. Most states now seek to prevent domestic violence by a widely used procedure known as "protection from abuse or-

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ders," or some similar term. The order—a "PFA"—is provided by a judge to a woman or her legal representative, often from a local "women's refuge." All that is required is a statement that domestic violence has occurred or appears likely, and the PFA is granted without a full hearing, without providing the accused man with legal representation or any chance of redress. The man is then excluded from his home for weeks or months until a full judicial hearing can be obtained. If he violates the order in any way, for example by visiting his children, he becomes guilty of contempt of court, and will probably be jailed. Obviously, he is offered no financial assistance in finding an alternative place to stay in the meantime.

This is an astonishingly broad power for petitioners, who are virtually never denied orders, and there is enormous potential for the abuse of abuse. The procedure makes it simple to strike at a spouse to exact revenge or impose pressure, and it is an invaluable weapon of intimidation in questions of separation, divorce, and child custody. "Abuse orders" should be the subject of national controversy. The only reason they are not is that, once again, the victims are likely to be not just men, but very poor men. Insofar as there is a movement to "reform" the practice, it comes from the 1992 bill proposed by Senator Joseph Biden that would codify many aspects of feminist legal theory into federal law. In the area of PFAs, his solution is to *expand* the practice by mandating interstate enforcement, thus bringing the FBI into the "war" on abuse.

The problems with the PFA procedure are, or should be, starkly obvious, but they are almost wholly neglected in the academic literature. If one suggests to a feminist criminologist that there might be issues here of injustice or foul play, the initial response is commonly one of utter astonishment that any aspect of the "progressive" legal framework might be subject to criticism. "You just don't get it!" The next reaction involves a failure to understand how exclusion from home and family might constitute "punishment," as opposed to civil regulation, which does not require constitutional scrutiny. And it can be almost impossible to establish the common ground required for any form of meaningful debate. I once had the experience of debating a feminist legal scholar, who asserted that there was no danger of abuse orders being misused, as women (unlike men) never lie about this sort of thing, and certainly not out of revenge or self-interest.

But abuse orders are not an isolated insanity. Again from the area of domestic violence, we are now witnessing the spread of "stalker" legislation across the country. The stereotypical "stalker" is an individual (well, let's be frank—a man) who pursues and harasses a woman over a period of months or years, and whom the police refuse to take seriously except perhaps by issuing minor warnings. The man habitually ignores cautions and court orders, until he maims or kills the woman in question. "Stalker" laws permit official intervention at an early stage in the process, demanding that police resort to arrest once early warnings are ignored. Also, violators face greatly increased penalties, often raised from a traditional 30 days or so to a major felony sentence of three or five years in prison. California passed the first such statute in 1990; nearly 30 others followed over the next two years. States are now vying with each other to pass the law offering the harshest penalties in the nation, with Michigan currently edging ahead of its competitors.

Stalker laws (like abuse orders) can certainly be justified in some instances; but once again, they give wide discretionary latitude to victims as well as to those who perceive themselves as victims—two categories that are by no means identical. As customarily occurs with such legislation, the statutes are generally drafted in disturbingly broad terms, requiring proof that the accused pursued and harassed someone, "demonstrating an intent to place a person in fear of bodily injury." But what exactly is "harassment," sexual or otherwise? As a number of celebrated cases have made clear, it is far from obvious how much any definition of harassment should take into account the standards and beliefs of a particular individual or community. What might be playful banter to one woman is gross harassment to another. What one woman might perceive as stalking might be seen by another as a series of chance encounters. What is the standard, and how is the offense proven? The law does not even include customary legal language indicating that the fear of harm must be reasonably founded.

The recent spate of laws effectively leaves the definition of "stalking" entirely up to the beliefs and perceptions of the woman accuser herself, regardless of her mental state or ideological approach. Such a law could not have been passed 30 or 40 years ago, because it was widely accepted that laws framed so badly could and would be used in a discriminatory way, and it was likely that virtually all the complainants would have been white and all the accused black. Is American society now so completely free of prejudice based on class, race, or gender that we can afford to do without the luxury of traditional legal protections? These points have all been raised by the American Civil Liberties Union, among other groups, but the feminist tide has proved too strong.

Praising one new statute, a *Philadelphia Inquirer* columnist wrote that "critics say the language is too vague. Women who have been stalked, however, seem to understand exactly what it means." The respondents may be congratulated on their legal acumen, but judges are likely to be less sanguine, and "stalker" convictions should be a lively issue in the appeals courts for years to come.

The topic of domestic violence has attracted some atrociously formulated pieces of legislation and official policy, but one of the most controversial must be the use of a "battering" defense to excuse murder. Anglo-American law has always recognized self-defense as a justification for or mitigating factor in homicide, but it has traditionally demanded that the defense be more or less contemporaneous with the attack, and not (say) an act of revenge committed an hour or a week later. Since the 1970's, feminist writers have cited cases where women killed husbands or lovers said to have systematically abused them over a period of years. Some of these cases demanded public sympathy, and judges would often recognize these extenuating circumstances. More recently, the use of a "battering" defense has been pushed much further, and since 1990 some states have offered mass clemency to women believed to fall into this category.

The question, again, is one of credibility. Some of the pardoned women had no evidence other than their unsupported word to corroborate the alleged abuse, while others did not even claim that the abuse had involved actual violence. Some of the cases in Maryland and Ohio were particularly egregious. In one instance, a pardoned woman had hired a contract killer to remove her husband, in the hope that she would profit from his life insurance. Other "abuse victims" tracked down and killed ex-husbands from whom they were already separated—an innovative form of "self-defense." But these cases

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again indicate the influence of the core feminist belief that women do not, perhaps cannot, lie when alleging victimization. This point is sufficiently certain to justify granting a literal license to kill.

And the situation is likely to get worse. In 1992, the American Medical Association decreed that all doctors should screen women patients for what they believe to be signs of domestic violence or abuse. If the workings of child abuse legislation are anything to go by, we are shortly going to see an explosion of domestic violence statistics, usually based on the most questionable evidence. These guesstimates will be used to argue for still further expansions of legal devices such as PFAs and stalker laws, as well as other even more appalling legal novelties.

But ill-defined statutes and draconian penalties are by no means the preserve of the criminal law. Feminist legal theorists have also been working intensely in the realm of tort, seeking ways in which "patriarchal" behavior can be modified or deterred by the use of financial damages. Senator Biden's recent bill to combat violence against women made great use of the threat of civil litigation. It classified rape as a crime of "hate" or "bias," thus clearing the way for financial settlements under civil rights legislation.

There are many advantages to this approach, not least in that civil cases require a lower standard of proof than criminal ones ("preponderance of evidence" as opposed to "beyond a reasonable doubt"). Also, the popularity of any form of civil litigation creates a bandwagon effect, in that more and more lawyers specialize in this particular subfield, creating a political caucus for the preservation and extension of the law, while increased media attention tends to create greater sympathy among judges and jurors. A widely used form of civil litigation inevitably causes the creation of a network of supporters with strong vested interests in the survival and continuation of the problem.

In the last decade, feminist advocates of legal change have focused their sharpest attack on what they term "pornography"; and again, the campaign is justified on the grounds of preventing sexual victimization. It is universally accepted in these circles that pornography incites violent behavior, such as rape and serial homicide (as the saying goes, "pornography is the theory; rape is the practice"). If that is correct (a major "if") then pornography should be seen as a violation of women's rights, and it is therefore subject to the enforcement mechanisms designed to prevent other forms of group discrimination or persecution, with sanctions including fines and civil penalties. This view—developed by feminist theorists Catharine MacKinnon and Andrea Dworkin—was tested in city ordinances passed in Minneapolis and Indianapolis. Most of these experiments faced severe legal challenges and were defeated by about 1985; but in 1992, the MacKinnon principle was upheld by the Supreme Court of Canada.

If sexually explicit material cannot be eliminated by law, then at least the producers should be made liable for its supposed consequences, and this is the principle of another recent federal bill designed to identify and protect "pornography victims." This would permit victims of sexual crimes to sue the producers or distributors of the material, if it could be shown that the pornographic material contributed to the commission of the crime.

The antipornography campaign might seem attractive to people who would normally be hostile to feminist legal innovations, and the city ordinances of the mid-80's won the support of moral conservatives and religious fundamentalists. In addition, political conservatives and libertarians often differ on the issue of pornography, and whether its suppression would in fact infringe on rights of free speech and expression. However, the particular nature of the feminist assault deserves attention, not least because of its definition of pornography, or lack thereof.

Of course, the term "pornography" contains a subjective value judgment ("I read erotic literature; he reads pornography"). In the Indianapolis ordinance, the definition involved "the sexually explicit subordination of women, graphically depicted, whether in pictures or in words"; and it soon became apparent that the law's supporters took "subordination" to include consensual heterosexual intercourse. Nor was this a simple error or oversight, as MacKinnon and Dworkin do in fact hold that such "normal" sexual behavior is exploitative, and thus differs from rape only in degree. It was this extreme and somewhat bizarre position that divided feminist opinion on the issue in the mid-1980's; but the recent Canadian decision accepted the principle that female subordination is the defining characteristic of pornography.

But even excluding the question of "straight" sex, is it really acceptable to regard depictions of sexuality as *ipso facto* pornographic? The potential for such a broad assault is certainly there, and the possibilities are endless. For example, cases of serial killers over the last century suggest that by far the most frequent inspiration claimed for their atrocities is the florid imagery offered by the book of Revelations, especially in the passages denouncing the "Whore of Babylon" and the Scarlet Woman. Would the proposed federal legislation permit lawsuits against Bible distributors from families that suffered at the hands of such criminals?

The antipornography campaign has much in common with the domestic abuse legislation described earlier, naturally enough because both stem from the same feminist legal tradition. In both cases, activists are using the law to strike at a problem which they believe to be extremely serious, but which they find difficult to define with the precision properly required in legislation. In both cases, the enemy is perceived as a trend or an "ism," an idea such as patriarchy or sexism. However, law is employed against persons, not ideas. It is not possible to strike at "male power" or "patriarchy" without hitting particular individuals within that group, which is seen as acceptable because the underlying theory is profoundly collectivist and because its exponents see little meaning in concepts of rights or obligations other than those of the group.

Victims of these new laws find themselves facing the ultimate legal nightmare of having done things that are defined as criminal or illegal according to the subjective and faddish interpretations of police or courts. In addition, the propaganda ("educational") value of such laws means that they must carry heavy penalties, in order to express society's outrage at unacceptable sexist behavior. Ill-defined laws, intrusive police, lack of suspects' rights, and savage punishments: it is a familiar mixture, but not one that we would have expected in a Western democracy. The feminist legal revolution is not even loosely compatible with the principles of the U.S. Constitution, or any related democratic form. It is open to serious question whether an exponent of this revolution can sincerely affirm allegiance to the Constitution or legitimately hold judicial or administrative office within the government based on that document.

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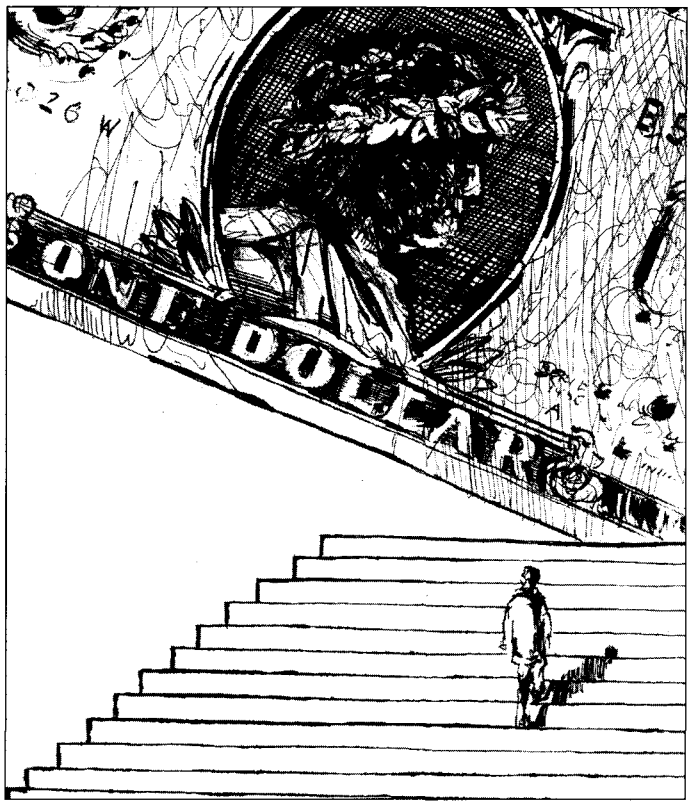
The Line Item Veto, Roman Style

by Bruce W. Burton



Winiejusz Lysik

Let us start with some uncheerful axioms about the fiscal policies of the central government of the United States at the close of the 20th century. "Beggar thy grandchildren" is, *de facto* if not by design, the guiding principle of the United States Congress. The government's gross debt, plus the interest on the debt, plus the locus of the annual deficit, all combine to inflict seismic damage on the nation's future. What are the core conditions leading to our national ailment? First, the federal government is too aggressive in gratifying ever-expanding appetites for new programs to solve every constituent-perceived problem. Government is too timid to establish priorities among a near-infinite number of programs clamoring to spend near-infinite resources. Government also refuses to set and observe spending priorities, the necessary precondition to any fiscal solution.

Simultaneously, there exists a "grandiloquence gap"—a vast chasm between the system's bewitchery in promoting new programs and the implacable reality of our financial condition. For example, the need to care for victims of AIDS, cancer, crib death, and learning disabilities outstrips both science and the fisc. Tragically and typically, however, the program-promoting rhetoric always outpoints reality in the media's ratings-driven attention.

If you find yourself in accord with these cloudy axioms and wish to examine a workable solution to the budget problem, read on. If you do not embrace these axioms, you will not be amused by what follows and should find something else to read.

The fiscal condition of the American government shows all the symptoms of an ancient disease. It is a disease which Madison, Jefferson, and others warned against with incisive clarity at the start of the Republic, but against which no structural remedies were then created that remain effective today. Essentially, the malady is the appetite of elected legislatures to spare no extravagance in the pursuit of immediate constituent gratification, without regard to whether all private fortunes are destroyed and the economic machinery disabled in the process. Thomas Jefferson warned of exactly this spendthrift ethos.

Since no effective constitutional cures now exist, it falls to our lot, as the 13th generation of citizens since the original settlers (or as the generational groups appurtenant to that 13th generation), to create some. One such remedy, if properly structured, is the line item veto, Roman style.

We are told, mostly by those most enamored of the congressional spending ethos, that the creation of a line item veto with real bite to it (as contrasted with Speaker Foley's toothless ersatz version), exercisable by an American President upon any appropriation *or* expenditure, would prove to be repellant to democratic political theory. Opponents of the line item veto assert that such control, in the hands of a determined chief executive, would dramatically and permanently tilt the necessary balance of power away from the House and Senate and toward the White House. The risk to our institutions is that Caesarism, or worse, would surely follow. Even when voiced by deficit-embracing pols who desire only to keep the spending

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train careening down the tracks, arguments about the undue reach of executive power are both valid and sensible and must be addressed. Republican history, American and Roman, provides a key to having it both ways—the power of true fiscal discipline vested in the White House coupled with no important diminution of congressional authority.

Ponder the Roman system of dealing with crisis in a counterbalanced system of government. History buffs will recall that the division of powers among the legislature and executive pursuant to the American constitutional system purposely parallels, in a very telling fashion, the Roman Republic's equilibrium among its three centers of political power during its flourishing centuries prior to 50 B.C. In short, there are some things to be learned from the Roman system of Republican governance that are quite apt to the American fiscal crisis.

Roman constitutional usage allowed the creation, for periods of six months, of a single-leader dictatorship. This short-term dictator held powers ascendant even to those of the consuls, but only during periods of grave, nation-threatening crises such as foreign invasion or rebellion. Such dictatorships were periodic in nature and renewable semiannually and would cease when the crisis ceased. George Washington's admiration for (and favorable comparison with) the statesmanship of Lucius Quinctius Cincinnatus, twice dictator of Rome during such crises, is well grounded. Cincinnatus was a sufficient patriot of the Republic to forsake his powers and return to private life after the successful completion of his tasks in each of his two dictatorships. Periodicity—emergency powers exercisable only during periods of extreme crisis—was at the core of this policy.

A modern extension of this historically successful concept of periodicity could take the sting out of the line item veto, just as it allayed Roman fear of undue power. The baseline fear was that someone would seek forcibly to make extraordinary, periodic powers permanent. Prior to the Ides of March in 44 B.C., Julius Caesar made himself dictator for ten years and later for life. Americans wisely share the fear of permanent despotism of any kind—fiscal, military, or otherwise. Like the Romans, we are more tolerant of short-term extraordinary powers during times of national crisis.

A far-reaching line item veto, created by constitutional amendment and vesting in the President the power to strike any individual appropriation or spending commitment from any bill, can be limited by periodicity. Because of the nearly exponential deficit growth arising out of cost of living adjustments, entitlements, and prior spending commitments, it would also be extremely useful to extend the veto to any item in the gross federal budget. Such a presidential power to cut could exist irrespective of the year in which any expenditure was first committed. At first blush this is a somewhat startling concept. Madison's core political dicta that men are not angels and therefore should not be vested with sweeping powers without "ancillary precautions" comes to bear on this notion. Yet the concept of periodicity is just such an "ancillary precaution."

To safeguard against an undue permanent tilt of power to the executive branch, the law could tie the line item veto to budgetary conditions from one fiscal year to another. Specifically, the line item veto could come into existence whenever interest paid on the federal debt exceeded a fixed percentage of the nation's GDP (say 3.5 percent). Currently we are in trouble. The GDP is running at about $5.7 trillion per year while interest on the net debt is running at $200 billion—3.5 percent. In other words, if at some time during the year 1996 it was determined by a set of agreed-upon accounting principles that interest on the debt exceeded 3.5 percent of GDP, whoever is then serving as President of the United States would immediately enjoy the power to exercise a line item veto over any congressional spending measures previously established or coming to his desk thereafter. The duration of such power could be the time necessary to reduce such interest below 3.5 percent of GDP (using agreed-upon accounting principles) or until the new fiscal year began, whichever was greater.

Even in the midst of fiscal crises, Congress represents all too well the notion that "all politics are local politics." Accordingly, even now Congress devotes its chief efforts and energy to devising, funding, and overseeing governmental programs intended to gratify constituent needs. These largely focus upon parochial clamoring for government largess, such as petroleum-state resistance in Congress to energy taxes. Moreover and sad to say, a congressman representing Groton, Connecticut, cannot be expected to raise his voice and his vote in vigorous opposition to Pentagon submarine contracts. A senator representing Iowa is not likely to oppose agricultural subsidies of a generous magnitude. Those legislators with significant numbers of AIDS victims in their districts cannot be expected to resist the political demand to quadruple and then quadruple again the amount spent for research and treatment of that plague. And under present conditions, national legislators coming from Connecticut, California, and Iowa can invariably be expected to collaborate in logrolling efforts to pass constituent-pleasing appropriations irrespective of national budgetary impact. On a political level, Congress is often incapable of getting interest groups to defer present gratifications or exercising necessary levels of fiscal discipline.

The President, on the other hand, can be expected to take a more transcendent view of the nation's welfare. As an institution, the presidency was designed to be answerable at three levels: to immediate constituencies, to the nation as an entity-constituency, and to a posterity-constituency of the nonvoting, even yet unborn citizenry. One must hope that, given the President's role as fiduciary for the nation's future, occupants of the Oval Office will exercise greater political courage than mere congressmen. Morally, the President answers not only to individual voters in Groton or Mason City or Beverly Hills, but also to posterity for the long-term economic health and viability of the entire country. A properly empowered President might often be expected to oppose the "grab some more benefits now and bill our grandchildren for it" mentality of Congress. At the least, intellectual honesty should cause a President to admit that a great deal of what is spent is wasted and could readily be terminated. (The GAO, the Grace Commission, and former Chairman of the House Budget Committee Leon Panetta figured that about $100 billion a year is usually wasted.)

There is a powerful commonality between people distressed over our environmental habits and people distressed over our fiscal habits. In the area of environmental protection, most Americans wish to bequeath unto their issue reasonably clean air and water and reasonable amounts of forest and natural parks. We also, when we take a moment to think about it, wish to bequeath to our issue an economic environment that is not drowning in unpaid pork bills, an economic engine not so de-

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pleted that a future generation's opportunities are dimmed forever by the need to pay for its grandparents' profligacy. Only the President can be expected to hold that perspective on a continuing basis, even if it is only sporadically acted upon.

Quite apart from the nation's moral obligations to the future, a Roman-style line item veto essentially allows the democratic process to work its will. During times when Congress is sufficiently organized and courageous to keep national spending within constitutionally permitted bounds (e.g., debt interest kept below 3.5 percent of GDP), there is no shift in power between the executive and legislature. Only when congressional appropriations have so far exceeded federal income as to hit the 3.5 percent trip wire and create a constitutionally defined threat to the nation's continuing economic health would congressional power be temporarily diminished. Under such circumstances, it is self-evident that Congress has *proved* itself inadequate to the task of fiscal self-discipline, and only then would the proposed line item veto come into play.

In the unhappy event that both the occupant of the White House and Congress are lacking in the necessary clarity of purpose or moral courage, then nothing will be done unless and until the electorate changes the equation. In this regard, responsibilities will be clearly affixed, even as the runaway spending train continues to careen down the tracks of immediate gratification—damaging both the present and future prospects of the nation. Jefferson regarded the wisdom of the people as the last great repository of power. The electorate's right to select its leaders constitutes the final line of defense, and clarity of accountability will assist that corrective impulse. Our constitutional system has met many crises for the past two centuries and weathered many storms; our self-corrective structure has proved adaptable in the past. This flexibility should once again be nurtured.

Obscuring the issues, and hence accountability, is the fiscal sinner's most intimate ally when he is back home on the political hustings. As things stand now, the issue of who caused a fiscal mess is "complexified" beyond any utility in the electoral process. You know the cant. We are told that no President has sent up a balanced budget for the past 12 years. And, after all, Congress actually spent less than the President wanted on this or that program. Or, Reagan caused the crisis because he spent it all on the Cold War and cut taxes in the balance. Or, Bush raised taxes and stalled growth—otherwise there would be no deficit. Or, Congress only responds to the felt needs of the long-suffering people, and Clinton-Gore were mandated to change. Many other villains are used to obscure blame, such as PAC money, the congressional committee system, special interest groups, the revolving door, the Federal Reserve Board, the "system," urban mayors, or the Japanese—pick any one. Pick any three. The Roman-style line item veto would eliminate the straw villains and point the blame at the fiscally irresponsible culprits who put constituent gratification above the national interest. Hence a Roman-style line item veto would add great clarity to blame-affixing.

Posit for a moment what would be the political dynamics of 1993 if the "new" Democrat sitting in the White House presently held a line item veto power pursuant to the periodicity proposal outlined in this article. Imagine the amount of pressure coming from the Republican and Perot camps (57 percent of the electorate) for the President to undertake the statesman-like posture of bringing about fiscal change through use of the line item veto, which would be the Constitution's bright-line test of leadership. Failure to use the veto would attach to the occupant of the White House the label of a "do-nothing" President with no regard for the future and would cast his reelection (perhaps even renomination) prospects into serious doubt.

Samuel Johnson observed to James Boswell that the prospect of hanging at dawn tended wonderfully to concentrate the mind. So, too, the 3.5 percent benchmark, once embedded in the Constitution, could wonderfully concentrate the minds of future Presidents. It is exactly this sort of "ancillary precaution" of which Madison spoke. It deserves enactment.

First

by Laurance Wieder

Just being, being born, just crossing
From the wings however long, is praise.
On stage I thought, spoke, sung, alone, before
A hall packed by an audience of one.
Practice made us help and hope for heaven.
Time and all that's in them keep the weak,
Bent, put-upon alive to promises like justice.
Part the curtain. Nations slip out between phrases
On the coral lips of oceans breaking over reefs,
Earth square and settled under winter rain.

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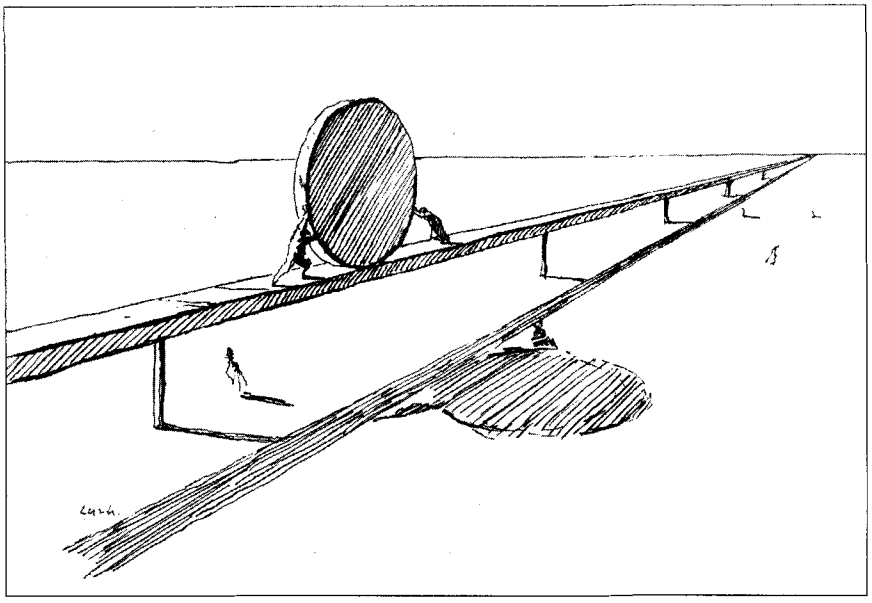
Crime That Pays

The War Against Joe Occhipinti

by Greg Kaye



Wincjusz Lysik

As a front-line soldier in America's war on drugs, Joe Occhipinti is an American hero. He became one of the most highly decorated federal agents in American history, with 78 commendations and awards in his 22 years of public service. His reward? He was set up by Dominican drug lords on specious civil rights violations; made to stand trial before Judge Constance Baker Motley, who denied him a new defense attorney when his own had a nervous breakdown and became suicidal; given a one-hour appeals hearing wherein the judges did not review the briefs and were intimidated by hundreds of Dominican protesters chanting "No justice, No peace!" and threatening to riot if the conviction was overturned; sentenced to 37 months in a federal prison and sent, contrary to a court agreement, to an Oklahoma penitentiary where he was placed in the "general population" with convicted alien drug dealers.

Occhipinti is a native of Brooklyn, New York, who became a New Jersey resident 20 years ago. At age 42, he resides in Manalapan with his wife Angela and his three daughters. Occhipinti's interest in community service steered him toward a career in law enforcement. Because he is too short for police service, he joined the U.S. Customs Service in 1972, where he investigated drug trafficking and organized crime. In less than five years, Occhipinti compiled the highest arrest record in Customs Service history. In 1976, feeling he had attained his highest potential at Customs, he applied to the Immigration and Naturalization Service.

Fluent in three languages, Occhipinti was assigned to a unit in Upper Manhattan, where over the years he developed a special expertise in the workings of Dominican organized crime. Compiling an impressive arrest record, he received his first of three Attorney General Awards in 1979. His work as an undercover agent with the INS led to the prosecution and conviction of over 40 organized crime figures. In 1982, authorities used information he had gathered to carry out what was at that time the largest drug seizure in our nation's history, netting 62 pounds of cocaine from the *Dulce Llaverias* drug cartel.

In Occhipinti's territory in Manhattan the small corner grocery stores—the *bodegas*—were often little more than fronts for illegal activity. Though there were routine grocery items for sale here, regular customers could also shop for counterfeit green cards and other government documents, obtain telephone "blue boxes" enabling them to make international calls without being charged, exchange food stamps for drugs, get cash for stolen Treasury checks, and purchase weapons and drugs. Many of these establishments also served as money-laundering outlets for drug lords.

On October 18, 1988, police officer Michael Buczek got caught in the crossfire of rival drug gangs and was murdered. When police authorities were unable to name the killers, the NYPD chief of detectives asked the INS district director to assign Occhipinti to the case. Occhipinti set up "Project Bodega," which conducted consensual searches (ones agreed to by the owner) of *bodegas* throughout Washington Heights. As a result of the investigation, Project Bodega identified those responsible for the homicide, including the actual trigger man, whom they learned had fled the country. It took Occhipinti a year to get the Justice Department to arrange for a formal extradition of the suspect. But when NYPD detectives went to the Dominican capital of Santo Domingo to get him, they were told by authorities that the fugitive had committed suicide.

Occhipinti contends that the trigger man was silenced by a Dominican drug lord named Freddie Then. Project Bodega

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had uncovered evidence that Then was running an extensive drug operation from the Dominican Republic and was training young Dominicans to be his agents in New York City. Occhipinti also learned that Freddie Then had a former federal prosecutor on his payroll. According to Occhipinti's source, the former official was using his influence to corrupt other federal prosecutors and was receiving cash and cocaine in return. Based on this information, Occhipinti organized a short-lived investigation he called "Project Esquire."

For the last seven months, devoid of badge and gun, not only has Joe Occhipinti battled to clear his name, but, as the foremost expert on Third World ethnic organized crime, he has attempted to make his files public in order to enlighten the citizenry and law enforcement agents.

Occhipinti took what he had learned to INS superiors and then to U.S. Attorney David Lawrence, chief of the Criminal Division, and to Deputy U.S. Attorney Jeh Johnson. Lawrence stressed to Occhipinti that his information was "sensitive" and ordered him not to discuss it with anyone. He arranged for federal prosecutors to interview Occhipinti's informant and take custody of the evidence. However, Occhipinti was soon ordered to remove himself from the case and to terminate Project Esquire. When asked if he thought the project was shut down because it uncovered evidence about corruption in high places, Occhipinti responded, "No doubt about it."

By late 1989, Project Bodega had become so effective as a multiagency task force involving the INS, DEA, U.S. Customs, and IRS that the Manhattan District Attorney's office assigned three full-time prosecutors, including John F. Kennedy, Jr., to prosecute the criminals being brought to justice. Occhipinti knew his efforts were succeeding when Dominicans attempted to bribe him. But because they found him incorruptible, they resorted to other, more subtle and deceitful, methods to destroy him.

The arrest of 62 illegals and 39 others through Project Bodega led to several important convictions and numerous investigations by other law enforcement agencies. The effort also led to the seizure of drugs, weapons, illegal gambling materials, and counterfeit government documents. Occhipinti's efforts with Project Bodega, as well as with Project Intercept and the notorious Wells Fargo case, clearly hurt the Dominican drug operations, but he had also ruffled the feathers of some influential political figures in the process. Enter a group known as the Federation of Dominican Merchants and Industrialists of New York. In March 1990, members of this group—which Occhipinti says is nothing more than a front for Dominican organized crime—appealed to the New York City mayor's office for help. Occhipinti was unjustly targeting the Dominican community, it said. The "federation" even organized a protest on the steps of City Hall.

Ever ready to cater to one of the city's largest constituencies, Mayor David Dinkins issued a statement criticizing the INS for permitting Project Bodega and claiming it was a "Republican-backed conspiracy" to sabotage the census. According to Dinkins, Project Bodega was making residents fearful of any government official, even census takers. This would lead to a decreased head count and subsequent loss for the city of federal funding and congressional representation.

Dinkins' histrionics achieved the desired result. The INS was inundated with complaints from citizens, census officials, other public officials, and area congressmen. Intimidated by the staged outcry, Occhipinti's superiors at INS headquarters in Washington immediately shut down Project Bodega. Moreover, Dinkins publicly demanded an investigation of alleged civil rights violations perpetrated by Occhipinti, and Dinkins and the Dominican leaders got their wish. In March 1991, Occhipinti was indicted by a federal grand jury for alleged federal civil rights violations.

It should also be noted that, during Project Bodega, Occhipinti uncovered evidence of widespread voter fraud. His evidence showed that the "federation" had registered aliens en masse under false identities or with forged documents. Dinkins won the election by a mere 30,000 votes out of 1.78 million that were cast.

Joe Occhipinti had an agenda—to enforce the laws of the United States to the best of his ability. David Dinkins also had an agenda, one that continues today. As Dinkins screamed at his opponent, Rudy Giuliani, upon a chance meeting in July, "Hey Rudy, why don't you go up to Washington Heights and explain to the folks about your pal, Occhipinti?"

Anyone who thinks that Joe Occhipinti's case is one in a million should consider the Washington Heights drug riot of July 3, 1992. It was sparked when Officer Michael O'Keefe was attacked by a gun-wielding fugitive named Jose "Kiko" Garcia. O'Keefe drew his weapon and killed Garcia in order to save his own life. As if on cue, numerous "witnesses" came forward to condemn O'Keefe as a "corrupt rogue cop" who had killed an innocent youth. Rioting to protest the policeman's actions then broke out in the area.

Especially anxious to quell the riots because New York was about to host the Democratic Convention, Mayor Dinkins pandered to the rioters. He visited the "bereaved" family while saying nothing to the traumatized policeman. He went so far as to arrange for Garcia's funeral in the Dominican Republic and to provide his entire family—all of them illegal aliens—with round-trip airline tickets paid for by New York City taxpayers. Were it not for a handful of reporters from the *New York Post*, a few diligent detectives, and Phil Caruso of the Patrolmen's Benevolent Association—who demonstrated that all of the "eyewitnesses" to the deadly encounter had perjured themselves at the behest of the drug lords—O'Keefe might well be in a jail cell, "convicted" like Occhipinti.

Washington Heights, known as "Dodge City," is devoid of any law, order, or civil authority. Like Camden, New Jersey, it is controlled by the drug lords, whose tentacles and contributions permeate New York City politics. On July 16, 1993, when a police cruiser accidentally collided with a drug courier on a motorcycle, the "residents" planned revenge. A false fire alarm was sent in, an ambush was set, and a fire truck and its personnel were firebombed and set ablaze. Some residents cheered, some stared, but none offered help while the burned

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firefighters writhed in agony and flames on the ground.

At the insistence of the Dinkins administration, the U.S. Attorney's Office of the Southern District conducted a "civil rights" investigation of Occhipinti and his actions. It interviewed owners and employees at *all* 56 premises that had been part of Project Bodega. The charge against Occhipinti was that although he had an INS "consent to search" form prepared in both English and Spanish, he had had suspects sign *after* rather than *before* the search. Forty-two of those investigated admitted they signed and gave permission *prior* to the search. Fourteen claimed that Occhipinti and his task force searched first, uncovered illegal activity, then "forced" them to sign—hence, their civil rights were "violated." Is it a coincidence that the 42 were *not* members of the Dominican Federation but that the 14 *were*?

Occhipinti vigorously denied the charge and demonstrated that he had performed over one thousand consensual searches during his career without a single similar complaint. Numerous law enforcement officers testified that they had witnessed Occhipinti obtaining signed consent *prior* to any searches. Interestingly, no other officers were charged with this "crime," just Occhipinti—the target of the Dominican Federation. Upon examining the minutes of the grand jury, Occhipinti also discovered that the witnesses had portrayed themselves as law-abiding citizens. The U.S. Attorney withheld from the grand jury information about the criminal records of the complainants, as well as the fact that contraband and illegal activity were uncovered at each of their locations.

Anyone who follows New York City politics knows of the group known as "The Foursome"—four politically powerful friends from Harlem. They are former Manhattan Borough President Percy Sutton, Congressman Charles Rangel, Mayor David Dinkins, and Judge Constance Baker Motley. In the court system where Occhipinti was tried, judges are randomly selected for cases with the help of a mechanical wheel. A defendant, therefore, has the luck of the draw regarding who will preside. But, in Occhipinti's case, Judge Motley was assigned *without* benefit of the wheel.

Motley immediately issued a gag order forbidding Occhipinti to discuss his case with the press. When she learned that Occhipinti's supporters had assembled 55 tape recordings containing information showing that the prosecution's witnesses had engaged in criminal activity and that the Dominican Federation was behind the charges against him, she ordered the tapes surrendered to the U.S. Attorney and refused to allow them in the trial. But perhaps the most glaring injustice of the trial was that Occhipinti was denied competent defense counsel. His attorney, Norman Mordkofsky, had suffered a nervous breakdown, was under a doctor's care receiving large doses of medication, and had even exhibited overt suicidal tendencies. Mordkofsky had asked to be excused so that Occhipinti could obtain a healthy and competent attorney. Judge Motley called Mordkofsky a liar, pounded her gavel, and denied his request. Occhipinti was then given only two months from the date of his indictment to prepare his 25-count defense, an unprecedentedly brief time span. After the five-week trial, with the jury denied the information proving that the prosecution's witnesses were unreliable, Occhipinti was found guilty and sentenced to 37 months in a federal penitentiary. The

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Bony Bowl

by John Nixon, Jr.

A gilded tortoise shell, no longer needed
By the original inhabitant,
Contained my family's discarded buttons,
Half-sticks of chewing gum, corroded pins,
Perhaps the ashes of a languid guest
Nearer that than a *bona fide* tray.

Turned on its back, the item hardly gleamed.
Imagine, though, the sylvan merriment
Had the old tenant been in residence
When the blond paintbrush was applied, then gone
Ambling, a slow Midas, through woods. *Just look*
At that bright fool. Almost glows in the dark.

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prosecutor even demanded additional sentencing because Occhipinti had gone to the press proclaiming his innocence. That request was denied by the court. By coincidence, the prosecutor in Occhipinti's case, Jeh Johnson, was the man who had closed down Project Esquire and is alleged to be the godson of Judge Motley.

Eleven months after the trial, Occhipinti appealed his conviction. Armed with a new attorney and an 800-page brief, he was confident that justice would prevail. The appeal, however, was heard only two weeks after the Los Angeles riots that followed the acquittal of four policemen charged with beating Rodney King. As Joe Occhipinti and his wife approached the court, they were greeted with scores of protesters shouting "No Justice, No Peace!" The protesters clearly threatened to riot if Occhipinti's conviction were overturned.

The actual appeal lasted only 30 minutes, and Occhipinti's attorney, Stephen Frankel, was allowed only 15 minutes to present his case. During oral arguments, the Dominican Federation's protesters burst into the courtroom—again implying that a riot or worse would follow if the judges dared to overturn the conviction. According to Occhipinti, the three judges were so intimidated that they never even read his attorney's carefully prepared brief. Within another hour, the verdict was in and the conviction upheld. The press was even told of the result before the defendant, for the purpose of placating the threatening mob.

Occhipinti surrendered himself on June 16, 1992. This "dangerous criminal" was shackled in leg irons, body chains, and handcuffs for 12 hours, transported to Oklahoma's El Reno maximum-security penitentiary, and placed in the midst of the general prison population, surrounded by hundreds of convicted drug criminals, some of whom recognized Occhipinti because they also were from New York. He quickly realized that his sentence was not 37 months; it was death at the hands of jailed criminals.

He immediately identified himself to sympathetic guards, who were outraged that they had been given no notice of his arrival. To protect Occhipinti, they placed him in "solitary," where he suffered a breakdown. He was transferred to a prison medical center in Rochester, Minnesota, where he involuntarily ended up in a psychiatric ward, a step he felt was taken to discredit him. Although doctors at the Minnesota facility recommended that Occhipinti be transferred to a minimum security prison in Fairton, New Jersey, to be near his family and out of harm's way, the Bureau of Prisons vetoed the recommendations. Occhipinti contends that, because they knew he would continue working to clear his name, the goal was to keep him away from his family, his supporters, and the media. Instead, he was transferred to a military prison at Eglin Air Force Base in Florida, where it was difficult to communicate with the press.

Numerous supporters came forward to seek justice for Occhipinti, including talk-show host Bob Grant, Guardian Angels Curtis and Lisa Sliwa, *New York Post* reporter Mike McAlary, and—in the forefront—former Congressman and current Staten Island Borough President Guy Molinari. An extensive file of documents compiled by Molinari's office shows beyond any reasonable doubt that the witnesses against Occhipinti were engaged in illegal activity and committed perjury, and that two of them were paid over $20,000 each by the "federation" to give their fraudulent testimonies. Among the evidence compiled by Molinari's office is an affidavit signed by newspaper editor Manuel de Dios on January 14, 1992. This tough and brave newsman and antidrug crusader went undercover and garnered evidence of Occhipinti's innocence. Mimicking their *modus operandus* in Colombia and the Dominican Republic, the drug lords assassinated De Dios on March 11, 1992. In December 1992, Molinari spearheaded a grass-roots campaign to convince outgoing President George Bush to commute Occhipinti's sentence and grant him a full pardon. In spite of stonewalling by the Justice Department, Bush commuted the sentence on January 15, 1993, but he withheld a pardon.

Joe arrived home on January 16, 1993. Though no longer behind bars, he remains a prisoner of sorts. His life in economic ruin—no job, no pension, depleted life savings—and partially disabled, he still fights daily to clear his name. His new attorney, Anthony Pope, armed with exhaustive new evidence, filed an application for a new trial in June, along with a motion for Judge Motley to recuse herself due to conflicts of interest and a motion for a change of venue. One piece of new evidence is an affidavit signed by Alma Camarena, a former assistant in the law firm of Andres Aranda and Jorge Guttlein, attorneys for the "federation." She stated under oath, "I heard them talking about how Occhipinti, then head of the anti-smuggling unit, was putting tremendous pressure on the illegal activities of their Dominican clients. Mr. Aranda told Mr. Guttlein that he would like to see Mr. Occhipinti 'eliminated.' Mr. Guttlein felt that was not the right thing to do. Mr. Guttlein stated instead that they should think up a plan to set Mr. Occhipinti up and have him prosecuted for violating the civil rights of Dominicans." Described as a reliable police informant, Camarena gave this information to the U.S. Attorney's Office a year prior to Occhipinti's indictment. She was even interviewed by Jeh Johnson, who buried the information and withheld it at the trial.

The Occhipinti case earned headlines in New York and New Jersey throughout June, as the news media began to report the evidence confirming his innocence. On June 17, for example, there were front-page headlines when three *bodega* owners who had testified against Occhipinti were arrested by the NYPD on charges of gambling, narcotics, and attempted bribery. According to Sergeant Frank Perez, when Fidelio Medina, Joaquin Checo, and Javier Checo were being cuffed, an irate Dominican woman screamed at the officers, "We're going to do you like we did Occhipinti!" According to Occhipinti, those arrested were relatives of Jose Liberato Checo, the reputed head of the Cibao drug cartel.

In the June 17 *New York Daily News*, police spokesman Raymond O'Donnell referred to the "federation" as a "Dominican organized crime organization." In June 1991, "federation" vice president Erasmos Tavaros pled guilty to laundering $70 million in drug profits. His sentence in the Southern District was *probation*. Occhipinti's, remember, was 37 months and possible death behind bars. New Jersey Patrolmen's Benevolent Association President Frank Ginesi declared "that the evidence seems to indicate that Occhipinti was intentionally subjected to a selective and malicious prosecution . . . which was generated by a major Dominican drug cartel that the agent was investigating."

For the last seven months, devoid of badge and gun, not only has Joe Occhipinti battled to clear his name, but, as the foremost expert on Third World ethnic organized crime, he has attempted to make his files public in order to enlighten the citizenry and law enforcement agents. He is now cooperating

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with several law enforcement intelligence groups.

On July 13, 1993, Occhipinti, myself, Curtis Sliwa, and others testified before the New Jersey Senate Committee on Law and Public Safety. The senators were aghast as Joe documented the extensive crimes he had uncovered while investigating the organized crime operated by aliens: narcotics smuggling, gambling, loan sharking, smuggling and harboring of illegal aliens, money laundering, illegal wire transfers, armed carjackings and stolen car rings, currency and document counterfeiting, bribery of New Jersey officials, wire fraud, food stamp and welfare fraud, other entitlement fraud, organized theft of Treasury checks, theft and exportation to the Dominican Republic of agricultural products originally intended for New Jersey's poor, distribution of untaxed liquor, illegal firearms and stolen property, assassinations, and terrorism. When one senator questioned his innocence, Occhipinti responded, "I've demanded a new trial. If again convicted, I face prison and death. Senator, does that sound like the action of a guilty man?"

Physically and financially exhausted, Occhipinti proclaims that "the only way the drug lords will stop me from clearing my name and exposing their crime, is through assassination. The public must realize that the only winners in our multibillion-dollar war on drugs have been the drug cartels. My vindication will be the first step back. If I lose, nothing will stop the country I love from degenerating into a Third World banana republic, where the rule of law will be supplanted by drug dealers' dollars."

The president of the federal agents' Patrolmen's Benevolent Association, Dick Callahan, has noted that in the year prior to Occhipinti's conviction, the local office of the federal DEA had conducted 2,700 investigations. That number shrank to 500 in the year after the conviction because of fear that the tactic used to send Occhipinti to prison would be used against other federal agents. Also as a result of Occhipinti's conviction, the president of the New York-New Jersey Port Authority Police Union announced that his officers have ceased all consensual searches and drug interdiction activity in the ports of New York and New Jersey, fearing that criminal charges regarding civil rights violations would be their reward for effective police work.

Support for Joe's cause cuts across party lines, as every citizen and lawman is adversely affected by his conviction. On January 25, 1993, I prepared a resolution for the New Jersey Assembly that was introduced by Assemblyman Dick Kamin on February 8 and that passed *unanimously* on February 18. As Assemblyman Kamin declared when introducing resolution AR-107, "Mr. Speaker, the democratic process can sometimes make mistakes—in this case, a tragic one. No law enforcement officer wants to be the next Joe Occhipinti. By passage of this Resolution, we can help the democratic process to restore his good name." The resolution, which passed 76-0, urges the Clinton administration to appoint a special prosecutor to investigate the alleged conspiracy against Occhipinti; a prosecutor to investigate what appears to be a Justice Department cover-up of the handling of the Occhipinti case; and a congressional panel to investigate the extent of Dominican and Third World drug operations in the United States, especially in New York and New Jersey. The resolution calls for a full pardon for Occhipinti if the results of these investigations warrant such action. It also calls for a new trial if the results are inconclusive. On July 13, the New Jersey Senate Committee on Law and Public Safety voted *unanimously* to release SR-86 (the Senate companion to AR-107) for a full floor vote. Passage was expected as this article went to press. The states of New York and Pennsylvania have introduced identical bills. The Clinton administration, however, has thus far ignored the New Jersey legislature's appeals. We request readers sympathetic to this cause to send a letter to President Clinton asking him to take action on New Jersey AR-107 and the Occhipinti case. Please send a copy to Joe for his files. Also, preprinted petitions to President Clinton are available from the Joe Occhipinti Legal Defense Fund, Inc., P.O. Box 318, Manalapan, NJ 07726. Further information on the case and a four and one-half hour video documentary are available on request, and donations for the legal defense are graciously accepted.

LIBERAL ARTS

THE REAL ABUSE

Two Minnesota women who accused a Roman Catholic bishop of sexually abusing them more than 30 years ago dropped their lawsuits last July. Though Bishop Gerald O'Keefe, head of the diocese of Davenport, Iowa, was obviously relieved at the women's decision, he still blasted the women's attorney, Jeffrey R. Anderson of St. Paul, Minnesota, who has represented over 100 people alleging sexual abuse by clergy. According to the *Chicago Tribune*, Bishop O'Keefe is not angry with the two women, who have long histories of mental illness, but rather with the lawyer "who knew very well that there were many reasons to doubt the women's stories. . . . [W]ithout even giving me the courtesy of a telephone call, this attorney sued me, attacked my reputation, and called into question everything that I have done in my 50 years as a priest."

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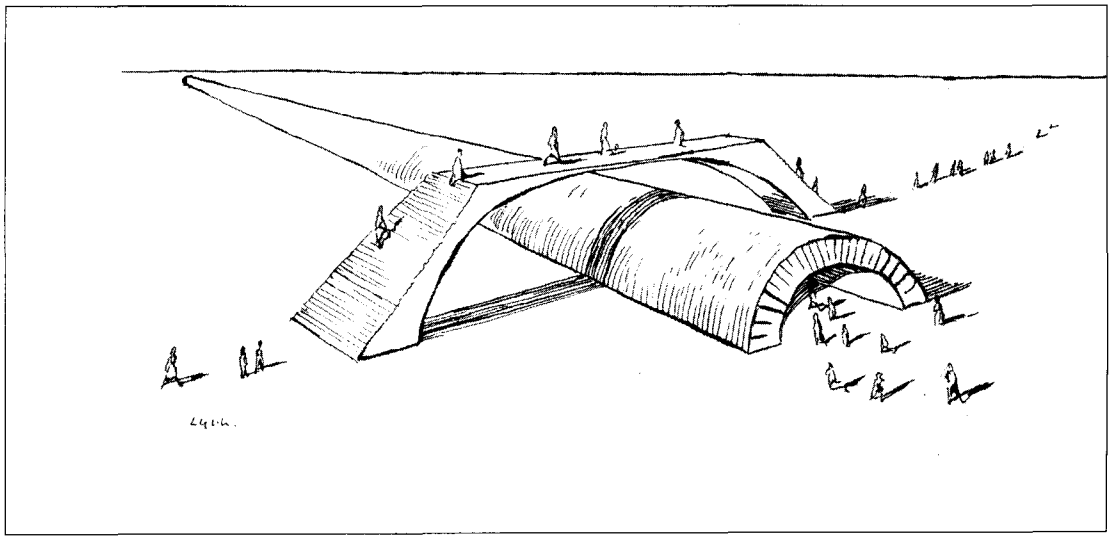
Truth and Public Truth

by Chilton Williamson, Jr.

"It is as hard to tell the truth as to hide it."
—Baltasar Gracián



Winiejusz Lysik

Challenging the Civil Rights Establishment: Profiles of a New Black Vanguard
by Joseph G. Conti and Brad Stetson
Westport, Connecticut: Praeger; 240 pp., $22.95

◆

While the conservative movement, like the liberal one, has its share of dishonest and fraudulent people, liberalism is itself an inherently dishonest business whose promulgators have been lying to themselves, as well as to everyone else, lo these many generations. As a misrepresentation of fundamental reality, its intellectual coherence and integrity are increasingly challenged by conditions of its own making as well as by unfolding events, in spite of the enormous political momentum it has accumulated since the cultural *tsunamis* of the 1960's as my own horrible generation (which ought to have been slaughtered at birth) has "matured" into an army of ideological zombies that first infiltrated, and finally has taken possession of, America's cultural institutions, the publishing business, and lastly the federal government itself. Political correctness is not just a prolonged paroxysm of demoniac hatred; it is the hysteria of fanatics who, aware that they cannot maintain the pretense of reality much longer without going mad, are prepared to embrace madness in preference to the alternative, which is to tear down the imposing Ministry of Public Truth they have laboriously erected, stone by grimy stone, over the past 60 or 70 years. Their accomplishment, after all, is no mean thing: in a few decades they have managed, with some largely unaccredited assistance from such otherwise forgotten Dead White Males as William of Occam, René Descartes, Friedrich Nietzsche, and John Dewey, to complete the inversion of reality begun some centuries ago, and transform the American Experiment into the First Universal Fantasy to which popular culture, highbrow culture, journalism, academic scholarship, and political philosophy have all succumbed.

The American people since the early 19th century have prided themselves on their "idealism," though there have always been pessimists among them to suggest that idealism, if not actually a variant of unrealism, nevertheless is a way station on the road to it. Had the Confederacy won the Civil War, perhaps Maryland Plantation, rather than Massachusetts Bay, might have become the totemic American social order and a solid business and political enterprise replaced a colony of religious schismatics as the foundational ideal behind the development of a great nation and empire. If so, Abraham Lincoln got some of what he deserved, and we got the rest of it. As it happened, the New England tradition won over all other sectional influences, imposing upon the rest of the country its bias in favor of the perfect over the good, the ideal over the real; its commitment to the power of positive thinking (if an idea is desirable, it can be made true by fervent belief); and its assumption that

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America is a divine as well as a merely human experiment (no matter what crooks or nonentities are President and Vice-President of the United States, God is always its copilot). American idealism, to the extent that it is more than an aspect of liberalism itself, has always functioned as liberalism's Useful Fool and Trojan Horse in the nation's history—in particular its intellectual history. It may be that a country's fate is sealed, that degeneracy sets in and decline becomes inevitable, at the historical moment when its political and material circumstances are perfectly aligned with its mental ones.

No component of the deposit of Public Truth is more zealously guarded than that which has to do with race, and cruel and unusual punishments are commonly held in reserve for those who transgress it. Thomas Sowell, Shelby Steele, Robert L. Woodson, and Glenn C. Loury are courageous men, and I do not discount their bravery by suggesting that, were it not for the racial preference allowed even black "traitors" to the official black sodality, they would have gained far less attention and prominence than they presently enjoy. In the absurdist society that America has become, their status as victims continues to be honored and protected even while they deny the validity of victimology as a means of understanding and improving the realities of American life, and deplore what Professors Conti and Stetson call "the twisted state of racial discourse in America today."

The importance of what the authors of *Challenging the Civil Rights Establishment* call the "New Black Vanguard" is the persistence of these men in attacking "the consolidation of liberal ideology as *the* ideology of black progress." Thomas Sowell is well enough known to need no introduction; Shelby Steele, a professor of English at San Jose State University, is the author of *The Content of Our Character* (1990), a book of essays offering an "existential" solution for the condition of blacks in America; Robert Woodson is the founder of the National Center for Neighborhood Enterprise and an advocate of "interior activism"; Glenn Loury is a conservative political economist at Boston University who distinguishes between what he calls "the enemy without," or racism, and "the enemy within," meaning the perverse and destructive self. While these four men differ in certain aspects of their social and political criticism, they are agreed in their condemnation of the power-hungry, greedy, dishonest, selfish, and manipulative civil rights establishment, which has always insisted that every problem suffered by American blacks is directly attributable to the racist feelings of white Americans and the institutionalized racism that reflects personal prejudice and hatred. Civil rights "leaders" like Jesse Jackson and Benjamin Hooks (of the NAACP) have a professional interest in maintaining the illusion that politically liberal policies, executed at the federal level of government, are necessary to alleviate the sufferings and improve the prospects of their people, as they have in downplaying or even denying altogether the personal and behavioral shortcomings of many blacks in America. As Booker T. Washington observed presciently many decades ago,

> There is another class of colored people who make a business of keeping the troubles, the wrongs, the hardships of the Negro race before the public. Having learned that they are able to make a living out of their troubles, they have grown into the settled habit of advertising their wrongs—partly because they want sympathy, and partly because it pays.
>
> Some of these people do not want the Negro to lose his grievances, because they do not want to lose their jobs.

The more the findings of the "objective" social "sciences" are relied upon as a basis for social policy, the more subjective the view of social reality—as well as the policies themselves—becomes. "To invoke such terms as 'values,' 'character,' or 'social pathology,'" Professor Loury has observed,

> in speaking about the poor (black or otherwise) is still today to invite the charge of blaming the victim or, if the speaker is black, of being an Uncle Tom. Remarkably, one still encounters the same line that was used to dismiss Moynihan 20 years ago—namely, that acknowledging a behavioral basis to economic deprivation feeds stereotypes about blacks and provides grist for the racists' mill. It is as if the facts about inner-city life, staggeringly evident to anyone with eyes to see, could be blunted by simply banning any discussion of them from polite society.

This conspiracy of omission is abetted by the media, as well as by the policy wonks who have reasons of their own for pressing upon the country what Sowell sarcastically dismisses as "the wonderful world of solutions." "The one thing a white liberal can never do with a black," Professor Steele says,

> is to be honest and tell him what he tells his own children. . . . Which is that you have to work hard and your life in many ways will reflect the amount of effort you put in. They teach that every day to their own children, but they come out in public and talk about blacks just as victims who need redress. This is racial exploitation by white liberals, who transform this into their own form of power. We're being had by them, and we really need to know it.

Sowell, Steele, Woodson, and Loury emphasize the importance of personal dignity, communal self-help, and individual initiative and deplore the message of the civil rights "leaders" and "raptivists," which is that the American dream does not exist for blacks—or that, if it does, it is realizable only by the transformation of America through revolutionary means. In Thomas Sowell's opinion, such a message, in addition to being a cruel discouragement of black initiative and hope, wrongly emphasizes political solutions at the expense of economic ones. As he argued almost 10 years ago in *Civil Rights: Rhetoric or Reality?*, an inverse relationship exists historically between the political power of ethnic groups in America and their economic progress. (At the turn of the last century the Irish, who were the most efficiently organized politically of any minority in the United States, were also among the poorest.) While the number of elected black officials in 1989 was nearly four times that in 1970, nobody—let alone the black officials themselves—argues that blacks are four times better off today than they were a quarter-century ago, or anything like it. In one respect, the Black Caucus and its equivalents at the state and local levels of government have been very successful:

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that is of course in the matter of affirmative action legislation. Professor Loury is unimpressed:

> The growing black "underclass" has become the constant reminder to many Americans of an historical debt owed to the black community. I suggest that, were it not for this continued presence among us of those worst off of all Americans, blacks' ability to sustain public support for affirmative action, minority-business set-asides and the like would be vastly reduced. That is, the suffering of the poorest blacks creates a fund of political capital upon which all members of the group can draw in the pressing of racially-based claims.

What Mencken would have called the black booboisie are the chief beneficiaries of affirmative action, not the black poor, whether deserving or otherwise.

The reward of the "New Black Vanguard" is largely vituperation from their racial brethren, who have accused them of "insensitive," "divisive," "self-critical," and "polarizing" behavior. "Vidkun Quisling," Carl Rowan wrote, "in his collaboration with the Nazis surely did not do as much damage to the Norwegians as Sowell is doing to the most helpless of black Americans." To all of which Sowell himself has responded with simple dignity: "Dissenting views are common in every group of people and in every society. A more balanced judgment often emerges out of these clashes of ideas. There is no reason why black Americans must be the only people on this planet who have to skip this process and hit the nail on the head with the first try." Not quite the *only* people, dissent among American blacks being no less popular than it is among American conservatives.

As for Public Truth, it remains a fasces of lies and illusions capable of flourishing only in the Fools' Paradise that the United States, from affluence and good fortune, has become. While optimists may comfort themselves with the thought that the country will not be able to afford such levels of unreality forever, pessimists are likely to suspect that a second Great Awakening, when it comes, will have arrived too late.

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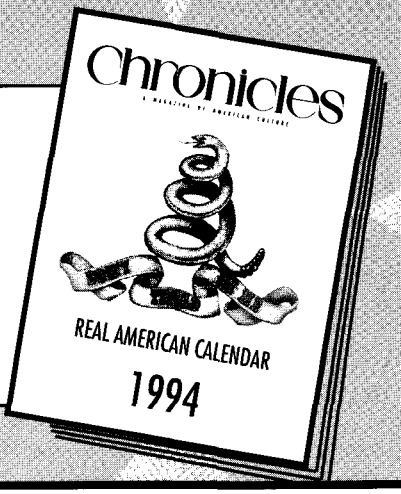

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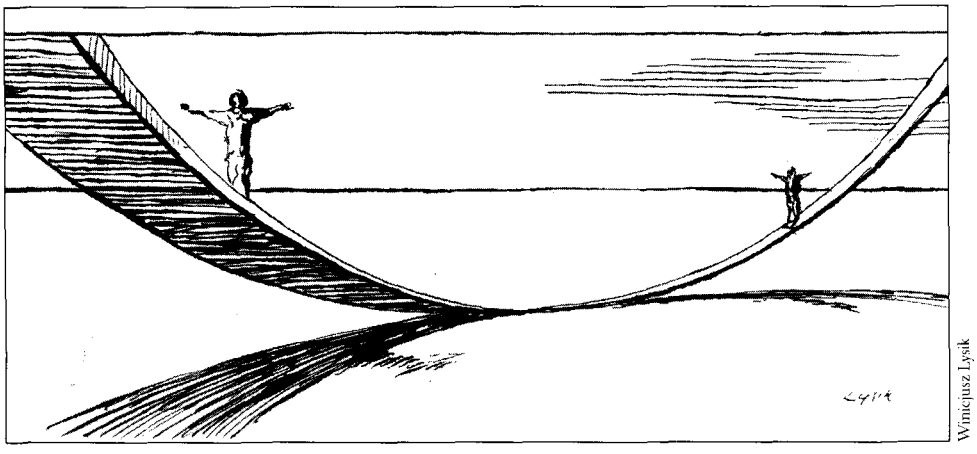
The Roads Both Taken

by Michael M. Jordan

"Sin maketh nations miserable."
—Proverbs 14:34



Wincjusz Lysik

A Reinhold Niebuhr Reader: Selected Essays, Articles, and Book Reviews
edited by Charles C. Brown
Philadelphia: Trinity Press International; 208 pp., $18.95

Niebuhr and His Age: Reinhold Niebuhr's Prophetic Role in the Twentieth Century
by Charles C. Brown
Philadelphia: Trinity Press International; 400 pp., $34.95

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In "On the Reading of Old Books," C.S. Lewis bemoans the fact that so many modern readers study recently written books rather than the classics, which have stood the test of time. This is true even of theology students, about whom Lewis writes: "Whenever you find a little study circle of Christian laity you can be almost certain that they are studying not St. Luke or St. Paul or St. Augustine or Thomas Aquinas or Hooker or Butler, but M. Berdyaev or M. Maritain or Mr. Niebuhr or Miss Sayers or even myself." Actually Lewis's view in this essay is quite temperate, for though he believes the ancients are better guides than the moderns, he still recognizes the importance of reading modern writers. He suggests that for every modern book we read we should also read an old one.

Concerning literature in general, I would go farther than Lewis. It would be better for us to read more of the classics. But in regard to the theologians, Lewis's one-for-one rule is in order. Certainly we need to read Augustine and Aquinas, Luther and Calvin, but we also need to read contemporary theologians, for they can bring the eternal perspective of theology to bear upon the ideas and events of our time; they can apply biblical insights to contemporary affairs in ways the ancients, no matter how prophetic they might have been, cannot. It seems to me that Reinhold Niebuhr is one of the theologians whom we ought to be reading. Theological students and intelligent laymen (Christian and secular) ought to welcome these two books, the one a collection of Niebuhr pieces edited by Charles Brown, the other Brown's well-written and carefully researched intellectual biography of one of the most prominent 20th-century Protestant theologians.

A Reinhold Niebuhr Reader contains about 60 Niebuhr selections; all but two have never been reprinted before. These articles, essays, and reviews, many of them only a page or two in length, originally appeared in magazines, quarterlies, and journals such as *Fortune*, *Commentary*, the *Nation*, the *New Republic*, the *American Scholar*, *Union Seminary Quarterly Review*, and *Christianity and Crisis*. The *Reader* has five sections treating Niebuhr's theology, his social philosophy, his response to events and issues, his book reviews, and his remarks on such miscellaneous subjects as American materialism and the theology, heroism, and martyrdom of Dietrich Bonhoeffer, Nazi tyranny and communist ideology, the state of Israel, the Second World War, the use of atomic weapons, racial injustice and conflict, technology, television's threat to culture, the moon landing, labor unions, and the Vietnam War.

The virtues of Brown's biography are many. As its title indicates, the book examines Niebuhr and *his age*, which means examining the pervasiveness of the Social Gospel in American seminaries in the 20's and 30's; the impact of the Great Depression and Roosevelt's New Deal; the growth and threat of Nazism and of pacifist and isolationist currents in the 30's, 40's, and 50's; the spread of

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communism and America's and Europe's response; the prudential politics of the Nuclear Age and America's attempts to halt the spread of communism in Korea and Vietnam. Furthermore, we see Niebuhr's attraction to the Social Gospel and socialism in the 20's and early 30's and his later "discovery" of Augustine and the consequent development of what is called his "Christian realism." This Christian realism, Brown observes, registers "moral distinctions while recognizing the universality of sin" and regards "the kingdom of God as a goal of human striving though never realized in history."

Niebuhr's Christian faith and his considerable knowledge of ancient and modern history convinced him that man cannot find ultimate meaning for life or adequate solutions to life's problems in nature, reason, or history, or in an existential reliance on the finite self. Much can be learned by investigating nature and studying history, and science and reason can provide some solutions to life's problems, but man must look beyond these finite sources. According to Niebuhr there is no security in history: "Man has no final security except in the sovereignty and majesty of God who presides over history." The "scandalous cross," he wrote in a review of Tillich's *Biblical Religion and the Search for Ultimate Reality* is "the very center of meaning for human existence: it asserts that a suffering love which was not triumphant in history is nevertheless the light that shines in darkness, because faith apprehends this suffering love to be a revelation of the very nature of 'ultimate reality.'"

Niebuhr was aware of the ironic fact that history itself has refuted two of modern man's secular faiths, which have themselves been based upon history or upon an imagined historical process: progress and Marxism. In Niebuhr's view both of these were variations of a dangerous utopianism. Belief in the idea of progress (which Niebuhr sometimes called liberalism) was "soft utopianism," while communism was "hard utopianism." Both were based upon illusions regarding the nature of man and history. Liberalism produced an idolatrous exaltation of the individual; communism, an idolatrous exaltation of society. Liberalism, of course, has many meanings. The dangerous liberalism, according to Niebuhr, was not that characterized by "the spirit of tolerance and fairness" but the sort that held as a matter of faith the idea of progress and that refused to recognize the necessity of balancing individual liberty with community needs.

Utopianism is a perennial problem, but it is especially characteristic of modernity. Niebuhr traced the source of modern utopianism to the Renaissance and the flowering of Renaissance assumptions about man, society, science, and history in 18th-century Enlightenment thinkers. In his biography Brown charts one of the more interesting features of Niebuhr's intellectual development: his "growing appreciation of Burke and Madison as bearers of Christian political wisdom." Niebuhr much preferred Burke and Madison to latter-day devotees of the idealism and abstractions of the French Enlightenment. Lecturing in London in 1937, Niebuhr stated: "Human beings do not live in abstract universal societies. They live in historic communities, and the peace, order, and justice of such communities, such as it is, is the product of ages of development, a fact which justifies Edmund Burke in regarding historic rights and duties as more important than abstract rational rights and duties." Like Burke, Niebuhr believed it was foolish to attempt through reason and science to banish all mysteries from life. Furthermore, with Burke he knew it was *impossible* to banish all of life's mysteries. He thought those who attempted to do so, such as John Dewey and B.F. Skinner, understood less about the self and history than "jurists, novelists and playwrights, historians, and the best political scientists." Niebuhr did not promote mysticism or pie-in-the-sky religion. Nor did he reject reason, science, and history: he merely recognized their limitations.

Niebuhr's social philosophy took a middle road on economic and political questions: a middle way between socialism and libertarianism, between collectivism and individualism, between Marxism and liberalism. He always stressed the need for an "adequate equilibrium of social power in a technical age." He held that human nature (man's tendency to use his freedom unrighteously) in conjunction with historical economic and technical developments require the "inner moral checks" supplied by religion and outer checks (social, political, and economic) supplied by governmental legislation. Thus he supported the mixed economy of Roosevelt's New Deal, he backed unions, and he criticized big business.

Another pervasive theme in Niebuhr's writings is his call for American and Western resistance to totalitarianism, of both the Nazi and communist varieties. Though he was attracted to socialism in the late 20's and early 30's—he even ran for the New York State Senate on the Socialist ticket—he knew the Soviet Marxist model was not for America. As early as 1930 he pointed out the inefficiency of Russia's state-run economy. In later writings he maintained that communism "created a hell on earth through its dream of heaven on earth": the result of utopianism, it was "a universal spiritual tragedy in Western history."

Niebuhr was a steady opponent of all forms of tyranny, and he preferred war and the risk of war to tyranny. He was critical of pacifists who would not defend Western liberty and American interests and security in the face of Nazi and communist threats. Pacifism he regarded as yet another form of utopianism. In his foreign policy he regularly opposed isolationism, though he opposed the escalation of America's intervention in Vietnam under Johnson's administration, believing the West's security was not threatened as it had been earlier by Nazi and communist aggression in Europe.

Much that Niebuhr wrote concerns the nature of the Western community. Its religion, he pointed out, was "derived from Biblical faith." He noted that Western civilization is characterized by common religious roots, "by technical efficiency and consequent economic power, by respect for the individual, by . . . self-limitation of governments . . . and by the achievement of justice" through a balance of social and political forces. Thus Niebuhr wrote on a number of occasions that democracy is not possible everywhere; it will not or may not work in places that do not have Western values and institutions, as, for instance, in Asia and Africa. In an article for *Foreign Affairs* Niebuhr remarked that governments and laws cannot create communities. Real communities, he observed, are organic, not artificial; they are concrete and historic, not abstract. They are based upon organic factors such as ethnic kinship, common languages, shared histories, and common cultures. Consequently, Niebuhr thought the attempt to establish a world

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federation "is the final and most absurd form of the 'social contract' conception of government." One could say that Niebuhr was not under any illusions about the prospects of multiculturalism or of a New World Order. He believed that common heritage is the basis of community and that on the local, national, and international level, justice, order, and peace are always tentative and fragmentary.

"Religious dualism is an error," Niebuhr maintained. And he argued that Christianity is not an other-worldly religion, for it recognizes the claims of the body as well as the soul. Thus Platonism, some varieties of mysticism, and some Oriental religions err in ignoring the human body and the world's body; on the other hand, naturalism, positivism, scientism, and other empirical "isms" err in neglecting the spirit. Concerning Christian views of the creation and of history, Niebuhr said: "The comparative well-being of the people of Western civilization in contrast to the poverty of the Orient is due to the life-affirming and history-affirming character of the Christian faith." Niebuhr added that William Temple "rightly defined Christianity as the most 'materialistic' of religions. It emphasizes that the soul and the body are a unity and that redemption is something else than the emancipation of the soul from the body." Sound as this Western theology is, Niebuhr also knew that it had produced a materialism which threatened the soul. He regarded with suspicion the American preoccupation with technology, productivity, and wealth as ends in themselves.

Perhaps the chief theme that informs Niebuhr's writings is human sinfulness manifesting itself in individual and societal selfishness and pride. Brown shows how Niebuhr's early and somewhat sanguine view of human nature and man's prospects of achieving societal justice changed as he read Augustine and pondered daily events in the calamitous 20th century. While a young pastor at Bethel Evangelical Church in Detroit, Niebuhr discovered, as he was to put it later in his life, "that human nature was quite different than I had learned at Yale Divinity School." What he witnessed in the urban industrial world of the Motor City disabused him of the "simple idealism" of liberal theology. Some remarks of Emil Brunner, a neo-orthodox theologian who presented a lecture in 1928 at Union Theological Seminary, where Niebuhr taught, illustrate the prevailing naiveté of many "establishment" theologians in the 20's and 30's. Brunner's lecture stirred up a heated discussion, about which he wrote, "What I said in my lecture about sin led to an animated and passionate discussion. The concept of sin in those days had almost disappeared from the vocabulary of enlightened theologians." Brunner also noted that the term *sin* "seemed to stimulate Niebuhr and set fire to his imagination." It is scandalous that any Christian theologian would not accept and affirm the traditional concept of sin. And it is to Niebuhr's credit that he gave sin a central place in his theology, presenting a biblical definition of sin as both a moral and spiritual problem.

I am much more comfortable with Niebuhr's theology than with some features of his politics. His support of the New Deal in the 30's might be justified, but the wisdom of his continued support, beyond the 30's, of New Deal approaches to social, economic, and cultural affairs is more than questionable. The Leviathan State and its Great Society welfare programs—these are not the solution. Indeed, increasingly we see that reliance upon government and politics only adds to the blight that is destroying our culture, our schools, and our cities. Yet there is political wisdom in Niebuhr's writings. Politicians and educators would do well to listen to what he has to say about Burke and Madison, utopianism, the Western community, and the American faith in materialism and technology. We would all do well to recognize, as he did, "the importance of the doctrine of 'original sin' as a basic category for the interpretation of history," and, one might add, as a basic category for understanding man's nature. Augustine, not Pelagius or contemporary liberal theologians, should be our guide, as he was Niebuhr's, on the reality and nature of sin. (I only wish that Augustine had been Niebuhr's guide on the issue of Jesus' Resurrection: on this point Niebuhr seems to have followed the liberal theologians.)

Like the character Pitch in Melville's anti-Emersonian novel *The Confidence-Man*, Niebuhr says: "St. Augustine on Original Sin is my text-book. . . . All boys are rascals and so are all men." Pitch stoutly claimed, "My name is Pitch: I stick to what I say." But unfortunately Pitch did not stick to what he said, and he was consequently beguiled by the confidence man. Fortunately, Niebuhr's reversal was not so radical as Pitch's. In his Gifford Lectures (later published as *The Nature and Destiny of Man*), Niebuhr used Augustine as his text. Years later he offered an adjustment of his Augustinian views, rejecting the terminology "original sin" but insisting on the historic and symbolic reality of the term. So he did not completely stick to what he said in his Gifford Lectures, and he was somewhat beguiled by the promises of the Leviathan Snake. Yet his last views are sufficiently Augustinian in their emphasis on the pride, vanity, injustice, and selfishness of both man and his societies, and on the great gulf that separates the City of Man from the City of God.

Brown's intellectual biography is a fair, accurate, well-researched presentation of Niebuhr's ideas in the context of his age. This excellent biography and anthology are just the books that Christian laity ought to be reading, so long as they also read Augustine and the other classic theologians as well. Since hope is one of the great Christian virtues, I also hope a few politicians and educators will read these books.

LIBERAL ARTS

GYPSIES BEWARE

A group in Romania supposedly modeled after the Ku Klux Klan plans a lynch war on gypsies, reports the independent daily *Romania Libera*. The Organization to Fight the Gypsies is based in Ploiesti, north of Bucharest. Its president, named simply Marcel, was quoted as saying: "All gypsies guilty of infractions who are not punished by law will be punished by us."

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The American Exception

by Larry Pratt

The Samurai, the Mountie, and the Cowboy: Should America Adopt the Gun Controls of Other Democracies?
by David B. Kopel
Buffalo: Prometheus Books;
420 pp., $28.95

◆

A favorite exhortation of those seeking to further restrict or remove the private possession of firearms in the United States is to "look at other countries," where lower murder rates are supposed to be a result of gun control laws. The underlying presumption beneath these laws is that guns cause crime. Getting rid of guns, or at least severely limiting them, reduces, so we are told, the level of violence in a given society.

Kopel, a prosecuting attorney in New York City before moving to Colorado where he served in that state's attorney general's office, now practices law in Denver and is an associate policy analyst for the Cato Institute. His careful analysis of the data from other countries as compared with the United States reveals major flaws in the assumption that foreign gun control laws can be successfully grafted upon this country. As Kopel repeatedly shows, foreign gun laws are applied in an environment of greatly restricted civil liberties and other social controls.

Arms control in Japan began as far back as the 16th century as a way of facilitating the collection of taxes, and from that time on, arms were considered the emblem of a nobleman. Common people were to remain unarmed and to pay taxes. Today, the Japanese tolerate a level of authoritarian intrusion into their lives that would be unacceptable to Americans. (However, the federal government's assault on the Weaver family in northern Idaho—killing a mother holding her baby in her arms and a 13-year-old boy—and its attack on the Branch Davidians in Waco, Texas, may be more widely accepted by Americans today than they would have been by their forefathers.)

Kopel finds a significant difference between the American and the Japanese understanding of the "rule of law" and quotes a Japanese writer to make the distinction: in America, "rule of law" expresses the subordination of government to the law; in Japan, "rule of law" refers to the people's obligation to obey the government and is thus "an ideology to legitimize domination." Even language supports the Japanese anti-individualist view: the Japanese word for "different" also means "wrong." Kopel makes a telling point when comparing the former Soviet Union with Japan: "Other nations, such as the former Soviet Union, have had severe gun control, less [sic] criminal justice safeguards, and more unconstrained police forces than Japan. But the Soviets' crime rate was high while Japan's is miniscule because Japan has the socially accepted and internalized restraints on individual behavior that the Soviets lacked." The Japanese also accept a degree of police control over their lives that Americans would reject. In Japan, for example, the police are permitted to come into a house and look around—all without a warrant. Detaining a suspect without a lawyer until he confesses is standard procedure. That is all part of their understanding of the "rule of law."

The absence of guns among the Japanese civilian population has not prevented suicide; indeed, the Japanese suicide rate is twice that in America. Even more interesting is the fact that if murder and suicide rates are combined, the United States is slightly *less* violent than Japan: 20.1 per 100,000 as compared to 21.9. While the overall combined rates are accurate, the relatively high number of Japanese suicides is probably inflated. Many Japanese suicides involve the murder of other family members by the one committing suicide. But dead is dead.

Kopel quotes an American journalist who said after a visit to England, "One axiom I heard a lot when I was there: 'We're subjects. You're citizens.'" The British, although less authoritarian than the Japanese, view the American tradition of "government as servant and subject to the people" as anarchistic. While historically this distinction seems accurate enough, this American tradition of self-reliance is under fire.

The New Jersey Supreme Court rejected a constitutional challenge to a gun control law on the grounds that the American right to bear arms derives from the British and that in modern times the British right has vanished: "For all practical purposes the average citizen cannot lawfully obtain firearms in Great Britain at the present time." The Court revealed its ignorance insofar as the average Briton can obtain firearms (limited in number and variety), while the right to keep and bear arms in the United States is hardly based exclusively, or even primarily, on the British precedent. Kopel's study of the history of firearms possession in Britain makes it clear that, at least in the past, the British understood that widespread ownership of firearms meant freedom, that he who controls the militia controls the state. But when the state (king, legislature, or president) controls the militia, freedom dies.

In Britain, gun control was imposed to contain not common criminals but rather political opponents; murder rates have actually increased slightly since the imposition of gun controls in England. And firearms restrictions have been notoriously ineffective in controlling violence in Northern Ireland, which is, after all, part of Great Britain. It is worth noting that Kopel finds that willing acceptance by British gun owners of moderate controls has not prevented the subsequent imposition of increasingly restrictive measures.

Gun control advocates must wish that Switzerland and Israel did not exist, since the environmentalist notion that an object causes human action—that guns cause crime—fails miserably to explain these two countries: both countries have civilian populations armed to the teeth, and both have among the very lowest murder rates in the world.

Once a Swiss citizen has a firearms purchase certificate, he may purchase any number of unregistered firearms. If he is a male, he must serve in the military. When not on active duty (48 to 50 weeks of the year), he is required to keep

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his fully automatic firearm at home. The murder rate in Switzerland is actually lower than that in Japan, where the civilian population has virtually no access to firearms. For centuries the Swiss have viewed weapons as synonymous with citizenship; in Switzerland, to put it differently, the symbol of a free man is ownership of one or more firearms. (It should be added that while Switzerland has a suicide rate twice that of America, only 33 percent of suicides are committed with firearms.)

The Founding Fathers of the American Republic intended that universal gun ownership should prevent the federal government from having a monopoly of force. The goal was "to prevent a standing army, the bane of liberty," said Elbridge Gerry of Massachusetts, one of the members of the Constitutional Convention. The West (from the Shenandoahs to the Rockies and beyond) was opened by armed Americans moving ahead of the police or the army. This experience was very different from anything in British, as well as in Canadian and Australian, history—though not, interestingly, from the example of New Zealand, whose gun laws are among the least oppressive of the English-speaking world.

Kopel devotes a fascinating section of his book to the rise of vigilantism in the absence of police service, or when the police have been totally corrupted by the criminal element. Contrary to the Hollywood depiction, vigilantes tended to represent the sense of the community and were drawn from leaders who were well-established and elected. They usually ran criminals out of town in preference to executing them.

The history of race relations in America has been influenced by the right to keep and bear arms; the 14th Amendment was added to the Constitution, in part, to overturn Jim Crow laws in the South, one of the purposes of these laws being to disarm blacks. The logic was simple: disarm the freedmen, and it would be easier to continue their slavery *de facto*. Less than a century later, Deacons for Defense and Justice armed and organized in order to protect civil rights workers who could expect little or no protection from some Southern sheriffs. Surprising as it sounds today, the NAACP convention of 1957 resolved that, "We do not deny but reaffirm the right of individual and collective self-defense against unlawful assaults."

Kopel's analysis of contemporary violence in America leads him to conclude that Americans are not very likely to want to give up their guns, since the claim that "the police will protect us" is less and less credible. As a chief justice of the West Virginia Supreme Court has remarked, "Private security guards are simply vigilantes for the rich." Clearly, for the rest of us who cannot afford our own vigilantes, a handgun in the pocket and an AK-47 for defense from social disruption (as in Los Angeles in April 1992) seem to be the accepted answer for a growing number of people. Besides, self-defense may actually be safer than police protection, since police shoot innocent people 5.5 times more often than do civilians.

Larry Pratt is executive director of Gun Owners of America and author of Armed People Victorious.

Pro Patria

by J.O. Tate

Against the Barbarians and Other Reflections on Familiar Themes
by M.E. Bradford
Columbia: University of Missouri Press; 268 pp., $37.50

◆

The recent passing of Mel Bradford has cast a chastening light upon this latest of his collections. Who had wished to be reminded of the author's indispensability in this or indeed any other way? Yet reminded we are and must be. This book means much in itself as it stands, and means more as the product of a powerful mind and a courageous man.

As he himself insists in his introduction, these 25 pieces are united by much more than the identity of their author. The essays on Southern literature are informed by the same historical and cultural consciousness that encapsulates the lives of 14 "Fathers": men of the founding of the Republic, whose service and convictions have been overshadowed, perhaps, by those of the colossi we know better than we know Rawlins Lowndes of South Carolina or James Duane of New York. Such short lives impress themselves upon the memory, delighting us as revelations of character, and instructing us in our national history in all its variety and specificity. The Antifederalism of Patrick Henry, the glory and shame of "Light-Horse Harry" Lee, the sketches of Samuel Adams and James Iredell—these and others are incisive attempts to restore American history and the political patrimony to those who have inherited it, but too often do not know it.

Informed by such awareness, Bradford was uniquely the man to write a study of the ratification debates, and a study too of their related and consequential inversion, the Southern valedictories of 1860-1861. His treatment of the arguments for and against ratification of the Constitution clarifies the meaning of that tormented though clear document. His account of the Southern farewells reverses more than a century of received opinion about the tone of the debates preceding the secession. In addition, his essays on Abraham Lincoln and Lyndon Johnson extend the logic of his views to those redeemer-figures, whose rhetoric and claims to virtue are linked to their search for power. Bradford has done more than any commentator I know to make the study of American history as "exciting" and "relevant" as any liberal historian could wish.

But of course, when we think about Bradford, we think of Southern literature. Here we have a personal tribute to Andrew Lytle, two useful pieces on Faulkner, a reconsideration of William Gilmore Simms, and a fine piece connecting Donald Davidson's poem about Simms' home, "Woodlands, 1956-1960," to the "great house" tradition of Horace, Jonson, Marvell, and Yeats. This last piece in particular reminds us of the loss implied by Bradford's exit, for he was working on a biography of Davidson when he died. And it reminds us too of other essays on Davidson in Bradford's *Generations of the Faithful Heart* (1983).

The title essay illustrates the scope of Bradford's mind, the extent of his engagement. It reminds us that Bradford could never be "politically correct" precisely because he was correct politically (and morally). Against nihilists, neo-Marxists, multiculturalists, and all the rest, he speaks the truth about the perversion of the academy in our time:

> For there can be no rational response to the errors of judgment and analysis made by persons who

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have absolutely no respect for the evidence of reason. Young people who have been taught to distrust all authority as a deception recently exposed—who have experienced too much change to believe in permanence—agree easily that nothing can be taught or learned. They gravitate naturally toward responses to reading and information that search only after relevance—often an anachronistic or far-fetched connection to the tendentious and/or topical concerns of a political subculture. For them reading and interpretation are merely private acts about which almost nothing can be communicated—a communion in *rejection of their culture as it has been* and of its would-be preservers, a rejection of legitimate authority. The nature, meaning, and purpose of education in the humanities cannot be understood on the basis of these presuppositions.

Bradford's words about reading and interpretation, his corporate and transgenerational sense of the construction of meaning, are I think best exemplified in this volume by some of his most instructive pages on Faulkner.

Bradford shows us that though Faulkner famously used modernist techniques, he was no modernist. The imperial self in Faulkner is hedged by contrast, qualification, the family, the social order, tradition, and community. Yet Faulkner's works have been interpreted as symphonies of alienation and despair. When Bradford points to Faulkner's chivalric themes and to his novels as conduct books, he has indicated something more than a truth about Faulkner, his books, or even a broader cultural value. He has also shown or demonstrated something of his own generosity, his amplitude of vision, his magnanimity. He has not projected upon Faulkner something of himself; rather, he has responded to texts and to values that were woven from elements which he knew profoundly, and which he was born to articulate.

So when M.E. Bradford writes of the man on horseback, the chevalier, the gentleman, the thought of his own demeanor and deportment and being as a Christian gentleman must come to mind. In his many sallies, sometimes as a Chevalier Bayard *sans peur et sans reproche* and sometimes as a Don Quixote, though never with a rueful countenance, he always fought nobly against various opponents. His good cheer and sustaining humor well became him. The writings he has left us—such as the evidences of mind and spirit collected in *Against the Barbarians*—remain an education, but also a reminder of a loss of international impact. Yet Bradford himself, always taking the long view, would have been the first to see even that loss as a mystery rather than a conclusion.

J.O. Tate is a professor of English at Dowling College on Long Island.

Beautiful Losers

Essays on the Failure of American Conservatism

Samuel Francis

The changes of the last decade have led to a virtual disappearance of the political Right. Beautiful Losers is a timely look at a crucial moment in the history of American conservatism, when, for the first time since the New Deal, the nation faces the prospect of political democracy without an oppositional force to liberalism. 256 pages, $37.50

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1-800-828-1894

Beautiful Excess

by Fred Chappell

The Hard to Catch Mercy
by William Baldwin
Chapel Hill, North Carolina: Algonquin Books; 451 pp., $19.95

◆

The Hard to Catch Mercy, William Baldwin's entrancing first novel, is bound to remind some readers of Mark Twain, especially of some of the bleaker pages of moral fables like *The Mysterious Stranger* and *The Man That Corrupted Hadleyburg*. But Baldwin's purpose is not to piggyback a Grand Master. He desires to remind us of Twain because he wants us to know "where he is coming from," as the current slang phrase puts it.

Geographically speaking, he comes from McClellanville, South Carolina, a low-country village on the outskirts of Hell Hole Swamp, a place that in 1916 must have resembled quite closely his fictional locale, "Cedar Point." His narrator, Willie Allson, describes this village as a "closed-in, private place" that differs entirely from the "wide-open universe" we all now inhabit. Literarily speaking, he comes from that bright-dark homeplace of the Southern spirit that Mark Twain and William Faulkner and Allen Tate (in his novel *The Fathers*) have so resonantly rendered for us. These writers are Baldwin's forebears and he is not ashamed of them and not timorous about standing before or among them.

Nor should he be. *The Hard to Catch Mercy* justifies all its author's confidence. It is a gripping tale and beautifully complicated as all three sides of the plentiful Allson family work out a single destiny. The family patriarch—100 years old and still going strong as the book opens—is

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Colonel William Thomas Allson. His mind is no longer trustworthy but he still retains some of the grandeur of a plantation owner, once the master of 106 slaves. "He had twelve children by two wives and almost lived forever," his grandson Willie tells us, omitting to mention here the black side of the family, the Negroes who claim Allson paternity and live with the family as closely, as doggedly, and in a few cases almost as silently as their shadows.

The novel's complexity is deceiving and may appear to an unprepared reader to be not quite coherent. The separate stories of Amy Mercy, Aunt Lydia, and King David Allson seem at first only episodes without much bearing upon one another, but the total design constellates these stories and a half dozen others into a powerful figure. The conclusion of *The Hard to Catch Mercy* is as melodramatic, as bloodcurdling even, as any film director could wish for, but it is carefully prepared in the best literary way and I doubt that even Henry James could deny that its excesses are dramatically necessary.

And when William Baldwin goes to excess he doesn't stop at the fenceline. Everything is here: flood, fire, pestilence and storm, tears and blood by the hogshead, savage cruelty and ugly murder and heroic battle. This novel is a book of Revelations and the character who gives it its title, the Hard to Catch Mercy himself, is all Four Horsemen in one, a figure both shadowy and all-too-real, ghostly but horribly corporeal too, so much larger than life that death must be an integral part of his being.

The Hard to Catch (Mercy is his ironic surname) is the villain of the piece, and one of the most utterly satisfying monsters ever to disgrace the pages of a book. Baldwin enlisted Twain's aid in creating this dread figure who is blood cousin to Huck's cruel Pap and Tom Sawyer's nemesis, Injun Joe. It is always a surprise to reread Twain because we forget the element of terror in his pages, the deep pitiless wilderness surrounding his sunny frontier towns, the mysterious midnights with their lurkers in darkness, the immanence of evil forces that no bolt or bar can keep out.

Here he is as he first appears to Willie Allson: "I'd never seen him up close, and even now his face was half hidden by a great flapping strawhat. Still, there was no mistaking the hardness in the man. The eyes were bright and dark, sunk deep beneath shaggy eyebrows. Truly, he could have hypnotized birds the way a snake does, except nothing else about him was snakelike. His nose blossomed out in the center of the face like a misplaced rose, and beneath that spread a long drooping mustache that lifted away from the stained beard when he opened his mouth to spit tobacco. Half the front teeth on one side were missing. The clothes—the clothes didn't fit."

There is more of this particular description but these sentences are sufficient to dispel any notion that the Hard to Catch Mercy would make a good Cub Scout den mother. The rose metaphor is pungent and surprising and adds just the touch of incongruity needed to make the figure not only menacing but eerie. This eeriness increases as the story unfolds until at last its power verges upon the supernatural.

Just as in Twain's fiction, the evil figure is able to do harm because the good people are after all not so very good. A cold and calculated hypocrisy and a sullen hubris divide the Allsons as a family and also as individuals. They have got into the habit of mistreating others, sometimes casually and without forethought, sometimes merely for the sake of convenience. The contempt that the Hard to Catch has for them is plainly deserved.

Not even young Willie is innocent. The final motive for the fury of the Hard to Catch against the Allsons is the death of his sister, Amy Mercy, an attractive lass who had captured the appetitive affections of most of the white males in Cedar Point, including even the Reverend Mr. Friendly. "Yes, I'd kissed her," Willie Allson admits, "in the full and complete knowledge that the carnal mind is enmity against God. Was it a sin to kiss my cousin's girlfriend? I can't say that I gave it even a second thought." He does think of it again, however, when he is forced to pay for this kiss with another, when the Hard to Catch forces him to pry open the coffin and kiss the dead Amy.

It is perhaps a commonplace of moral fiction that a thoroughly vicious character can look cynically into the souls of the respectable and find there the same qualities as in himself. When the Hard to Catch strips Willie literally naked, he says, "Ain't much to you, is there?" His observation is not purely physical in nature.

In pointing out resemblances to earlier fiction, especially to that of Mark Twain, I do not mean to suggest that *The Hard to Catch Mercy* is in any way a derivative book. It is not; it is a highly original performance. But it is an old-fashioned story, unabashedly melodramatic, unashamedly moral in purpose, unblushing in its determination to entertain. It fills and overfills that neatest description of a good novel: it is both serious in its intentions and great fun to read. I can't think of another contemporary writer who has made a more splendid debut than William Baldwin. Here is a writer I intend to keep reading. In fact, I'm sure I'll keep reading over the years this same first book. It's that good.

Better.

Fred Chappell is a professor of English at the University of North Carolina at Greensboro and author most recently of More Shapes Than One, *a collection of short stories.*

Credo

by Samuel Hux

Can Poetry Matter? Essays on Poetry and American Culture
by Dana Gioia
Saint Paul: Graywolf Press;
257 pp., $25.00

◆

"Less is more" has proved to be (more often than less) a dreadful aesthetic credo, inspiring and justifying boldly insipid architecture better suited to robots than to humans, monotonous music in which the intervals of silence are the most welcome parts, minimalist visual art that is an insult to the visible universe, and poems little different from workaday utterance one would be generous to call prose. But the clause "less would be more" makes a lot of sense: a great deal less poetry than we have would probably be a good thing. Never has more poetry been published; never has it mattered less.

There are profound sociological reasons for the superabundance. Dana Gioia focuses on one: the proliferation of "creative writing" courses, which require instructors who must in turn be validated by publication. "Like subsidized

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farming that grows food no one wants, a poetry industry has been created to serve the interests of the producers and not the consumers." That is not quite exact, since the consumers mostly *are* the producers—one of Gioia's points, in fact. Which is why contemporary poetry matters so little. "American poetry now belongs to a subculture," he writes, and not to the "mainstream of artistic and intellectual life."

There is a lesson here I do not think most poets will learn. The generally educated person who in another time kept up to some degree with the poetry of his day, because not to do so was not to be generally educated, no longer feels so compelled—in spite of the compliment the poet pays him of speaking just as he does. Perhaps I should say "because of" rather than "in spite of": if poetry is not a "rite," as W.H. Auden said, "deliberately and ostentatiously different from talk," then why bother with it? Would you attend the ballet to see dancers merely walk about the stage? But probably most "poets" could not benefit from the lesson if they learned it. We have far too much "poetry" because we have far too many unworthy claimants to the poet's mantle.

The last essay of Gioia's book, "The Poet in an Age of Prose," since it is a discussion of the "New Formalism," might be considered an answer to the first and title essay, "Can Poetry Matter?" The new formalists consciously seek a general audience who "innocent of theory . . . had somehow failed to appreciate that rhyme and meter, genre and narrative were elitist modes of discourse designed to subjugate their individuality." But in another essay, "Notes on the New Formalism," Gioia makes some observations that temper one's optimism. Much of the new formalism is "pseudo-formal." The poem *looks* formal by virtue of its visual arrangement on the page, but the "architectural design has no structural function" as the "words jump between incompatible rhythmic systems from line to line." The reader's experience is "rather like hearing a conservatory-trained pianist rapturously play the notes of a Chopin waltz in 2/4 time."

But who is this Gioia? By what authority does he judge? He is the author of *Daily Horoscope* (1986) and *The Gods of Winter* (1991), whose poems are what poems have traditionally been but seldom are now: "the fine / disturbance of ordered things when suddenly / the rhythms of your expectation break / and in a moment's pause another world / reveals itself behind the ordinary." And in the instance at hand he is the author of the most lucid examination of poetry I have read since Babette Deutsch's *Poetry In Our Time* (1954)—which in my scale of values is like favorably comparing a book of historical reflections with those of John Lukacs or of philosophical speculations with those of Hannah Arendt.

In a review I must sight some of Gioia's other general concerns: "the dilemma of the long poem," regional poetry, poetry's silence on business even when the poet is a businessman. But Gioia's concerns are not merely general and theoretical. There is excellent practical criticism of old masters like Wallace Stevens, T.S. Eliot, Robinson Jeffers, and lesser voices, and his essays on Weldon Kees, Robert Bly, Howard Moss, and Donald Justice are the most perceptive on those poets you will find anywhere. Mercifully, neither Maya Angelou nor Rita Dove (inaugural embarrassment and new laureate, respectively) are discussed, but 17 other poets receive Gioia's undivided attention. A few might wish that were not the case.

While Gioia can be exceptionally generous—John Ashbery "is a marvelous minor poet, but an uncomfortable major one" (yes, that's generous)—he can also be wicked: "Ideas in Ashbery are like the melodies in some jazz improvisation where the musicians have left out the original tune to avoid paying royalties." Commenting on one of Bly's brutalizations of Mallarmé, Gioia judges, "Not only does it not seem like the verse of an accomplished poet, it doesn't even sound like the language of a native speaker." Bly's translations are important because they "underscore his central failings as a poet. He is simplistic, monotonous, insensitive to sound." "One can always tell when Bly is excited. He adds an exclamation point." There are lofty emotions here, but Bly lacks the skill to make his reader feel them, so "the reader remains outside the emotional action of the poem, a little embarrassed by it all, like a person sharing a train compartment with a couple whispering romantically in baby talk."

I single out Bly for two related reasons. First, I delight to see an extremely influential poseur receive the critique he so justly deserves. (On reconsideration, I'm sorry Angelou was left out.) Second, I want to suggest that Gioia practices what he preaches. One of his major complaints about the poetry subculture, one of the reasons it is so hard to take seriously, is that its members practice too much backscratching instead of honest reviewing, while they ought to regain potential readers' trust with candid criticism: "Professional courtesy has no place in literary journalism."

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LIBERAL ARTS

GAYS AND GLUTTONS UNITE

New York Assemblyman Dan Feldman is attacking "the last area of safe bigotry" with his bill to bar discrimination based on size, the *Chicago Tribune* reported last May. While the proposed measure would protect the tall, the short, and the underweight as well, it has drawn most of its support from overweight people, who complain that they are often discriminated against in employment, education, and housing. Sally Smith, executive director of an organization called the National Association to Advance Fat Acceptance (NAAFA), for example, denounces the "blame the victim" myth that chastises obese people for their apparent unwillingness or inability to conform to the physical norm. Feldman, who is not overweight, became interested in obese rights after reading reports of the bias encountered by people like Ms. Smith. A supporter of gay rights, he maintains that if he opposes discrimination in that area he should oppose it in other areas as well.

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Letter From New York City

by Nicholas Stix

Legalized Racism

Wap! Someone just punched me, going down the subway stairs from the elevated. Behind me, I hear girlish, teenaged laughter. No accident here. I turn to my assailant, a 12- or 13-year-old black girl and tell her she'd better keep her hands to herself. "You better keep on walkin', I don't talk to no white people," she replies.

I want to slap some sense into her, but this is the South Bronx, and I'm the only "white" face for miles. Hitting back would be suicide, and she knows it. She needs only to start screaming and pointing at me, and thugs, er *activists*, will come out of the woodwork to beat me to a pulp, maybe even to death.

You may ask what on earth I, a white man, am doing in the South Bronx? Three years ago, when 16-year-old Yusuf Hawkins was murdered in Bensonhurst, Brooklyn, white "liberals" emphasized that young Hawkins had a *right* to go anywhere he wanted; he didn't need a reason. No such rights apply to a white man in the South Bronx in broad daylight. No liberal organizations will take up my cause. Not over a punch, not over a killing.

The ravings of a frustrated racist? A perhaps true but exceptional case? Believe either at your own peril. Despite a virtual news whiteout against publishing stories of black racial attacks, harassment, and discrimination against whites, the stories are increasingly leaking out.

A hypocritical practice shared by media and "civil rights" organizations means they rightly scream bloody murder when blacks are victimized by racist whites, but maintain silence or engage in shameless apologetics when blacks attack whites. Sometimes these apologists conjure up a casuistry that would make a Jesuit blush, showing how, in reality, it was the bruised, bloody white who assaulted the poor blacks.

In New York, the city's Human Rights Commission (HRC) supposedly exists to protect all citizens against discrimination. Where blacks are the accused malefactors, the rules just don't apply. A white man claiming racial harassment on his job as a senior public administrator filed a human rights grievance over five years ago. The HRC never investigated the charges, despite an agency policy (and claimed track record) of investigating all charges within three years. The man, since retired, recently initiated a lawsuit. Is it a mere coincidence that the HRC just agreed to investigate his case?

In a related case, several white former executives of New York State's Off-Track Betting Corporation have initiated a multimillion-dollar civil suit against their past employer. The former executives charge that OTB fired them merely for being white. During cross-examination last spring, a high-ranking current OTB officer acknowledged that the plaintiffs were white and, hence, "had to go." In the next breath, the officer denied that this constituted racism.

In early 1991, I was attacked on the subway during rush hour by a gang of four young blacks. A transit detective acknowledged that the attack was obviously racially motivated, a "bias crime" as far as New York's laws are concerned, but "there are some things you can't say" due to the political climate. The detective also reported that such racially motivated attacks by blacks against whites occur every single day in New York City.

The routine harassment and humiliation of whites in the workplace and the physical attacks on them on public conveyances are pieces of the same shattered mosaic. The political climate the detective spoke of was produced by an alliance of groups—white "liberals," black nationalists, and the media—and tolerated or granted victory through default (leaving town or boycotting public conveyances) by their supposed opponents.

The aforementioned alliance has succeeded in making any mention of black racism a virtual taboo and in grossly exaggerating urban white racism. Thus, every ugly racial incident instigated by urban whites against blacks is emblazoned on the front page of every big-city newspaper. The mere claim by a black, without benefit of evidence, that he was discriminated against gets saturation coverage. On the other hand, stories about black crimes are constantly distorted, by printing that they were merely "assaults" or "robberies" while omitting that the victims were picked out for being white.

As a result of the toleration and encouragement of this racism, the attacks, the harassment, the prejudice have become brasher. In more and more of New York's public sector and (publicly financed) nonprofit agencies, black workers may utter racial slurs and degrade and even assault white workers with impunity. The point is to run whites out of the work place.

The crux of a racist system is that, regardless of the feelings of the majority of (black) office colleagues, one alone or a small group may harass or assault someone merely because of his pigmentation. The majority of black workers may despise the few who discriminate, but they tolerate the bigots all the same.

The silent majority of black workers do nothing against black racism, due to the aggressive nature of the hatemongers and the latter's insistence that opposition would amount to treason against the race—and be dealt with accordingly. Perhaps more importantly, the legitimacy enjoyed by black nationalism is due largely to *white* support. The agencies in which I saw the brashest, most aggressive black racism were run by whites. For the white working in such a setting, the white boss or colleague may at times be one's worst enemy. Certain whites, from the entry-level positions to the program director's office, even seek favor with their black colleagues, bosses, and subordinates by setting up white employees for abuse. The devious ones thus protect themselves against landing on the whitelist.

Current journalistic etiquette requires that I balance every example of black racism with ten of white malefactors. This unwritten rule is utterly at odds with my experience. I seem to be in too low a tax bracket to afford the sort of blinders that "liberals" wear. Then, too, unlike those whites who check under their beds every night for racists, I am used to actually living and working with black people, not idealized, abstract victims.

The only people whose opinions matter to me at the moment are the many

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blacks to whom I owe favors: for the hospitality of a home-cooked meal, counsel, a job, my life. Insisting that the charges don't apply to them will not impress my benefactors and will not change their feelings of having been betrayed. Many of them truly *were* victims of white racism. Their displeasure is a bitter price I'm forced to pay in a world in which I find myself increasingly alienated from black people.

All my adult life I have stood for integration. As a 17-year-old token white in a black youth program, I wrote a paper on the need for integration. I remember it well. In the intervening 17 years, philosophically nothing has changed. In practice, everything has changed. I won't tell you that "some of my best friends are black." I have no black friends, and do not see any in my immediate future.

A social world in which black people do not exist, or exist only as trouble, may be normal for most white people. It's not normal for me. Nevertheless, I am not bucking for martyrdom, and I am not in this world to be abused. Hence, I am ceding the playing field to the racists. You've won, guys. To the degree possible in New York, I'll try to avoid work places and social situations where no white males or dogs are welcome.

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Letter From Arkansas

by Joseph Pappin III

Pardon the Pardons

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It is reported that "faithful adherence to legal principle sometimes [takes] a back seat to the more compelling demands of politics." This appears to be a pointed assessment of a little-publicized controversy surrounding the pardon of four convicts by last year's Acting Governor of Arkansas, dentist Jerry Jewell. As president pro tempore of the state senate, Jewell became the acting governor—and officially the state's first black governor—when Governor Jim Guy Tucker left Arkansas for four days to attend Bill Clinton's inauguration. But back to the assessment.

Though the "compelling demands of politics" refers to a pardoning of four Arkansas prisoners, in that instance the pardon came from King Louis XV in 1756. The prisoners were deserters from the Arkansas garrison, one of whom had murdered a soldier on the way out of the fort. Captured by the Quapaws, they found an advocate in Quapaw Chief Guedetonguay. The chief, in fact, traveled to New Orleans and reminded the French Governor Kerlerec of the many ways in which the Quapaws had befriended the French and fought on their behalf. Failure to grant the pardons risked a Quapaw revolt. Governor Kerlerec eventually relented and forwarded his decision to the appropriate French minister at Versailles, who gained King Louis' reluctant sanction. Kerlerec was then admonished to be careful of letting the "savages . . . set a tone that accords neither with the King's authority nor with the good of the colony." The King's ministers proved to be both principled and, above all, politic in dealing with the complexities of crime and politics on the Arkansas frontier. More than two centuries later, Arkansas politics—and crime—are still complicated.

Arkansas life is nothing if not interpersonal and interconnected. Mountain folk run a different course: independent, rugged, survivalistic. Still, the oldest of Arkie jokes asks, "If my wife and I get divorced will we still be cousins?" Everyone will ultimately, by the very nature of living in Arkansas, encounter or intersect with the life of everyone else. After all, who in Little Rock hasn't found himself either jogging with Clinton or in line for coffee with him at the downtown McDonald's? I've even waited behind him in the McDonald's drive-through lane while he tried to get his Lincoln Continental unstuck from the circle drive. Only last year, in fact.

On the day of the presidential inauguration Jewell granted executive clemency to four convicts—actually two were already out on parole. The *Arkansas Democrat Gazette*, the daily newspaper in Little Rock, reported in its lead article that Acting Governor Jewell, when questioned on the day of the pardons, couldn't recall either the first names of the convicts or the nature of their crimes.

Actually, Jewell's choice of men to pardon reflected a cross-section of Arkansas criminality: Joe Wesley, age 54, manslaughter; Gary Bryant, 39, burglary and forgery; Billy Ray Davis, 40, murder; and, oh yes, Tommy McIntosh, 29, cocaine possession. I say "oh yes" because Mr. McIntosh's father, Robert "Say" McIntosh, is the most outspoken and most colorful black activist in the state.

Say McIntosh has mastered the Hegelian art of Arkansas politics. (Don't sell us short down here; after all we—you?—put a Rhodes scholar in the White House.) For Hegel, negation was the driving force of reality, right? I mean, being was static until injected with a healthy dose of nothingness, which resulted in becoming—hence the dynamism of existence, history, and politics. Well, Arkansas politics is injected with big doses of Hegelian negations and nothingness. The biggest thing around here in the past three years was probably what Say McIntosh *didn't do* one day. He declared, shortly after the green light was given by the Supreme Court, that he was going to burn the American flag on the steps of the state capitol. He gave us about two weeks' warning. Why, every pickup from the hills of Arkansas rolled into town that day just to see if Say would do it.

Hundreds gathered; scores of police and state highway troopers. Hey, we might even have a riot. Say pulled out the flag, started to light the fire, then gave a speech, announcing that for the common good, to which he was devoutly dedicated, he was not going to burn the flag. Pictures all over the front pages of newspapers; lead story on the six o'clock TV news. Not doing something at just the right time is big news and big politics in Arkansas.

When I served as manager of human resources for my brother-in-law's oil company four years back, Say came to us wanting to lease one of our Shell stations. We had dealt with Say before, and we were woefully aware of his own unique schedule of rental payments: staggered intervals. To press Say on anything is to risk having a civil rights suit filed against you. Say even had a suit against Clinton until recently for back payment of services he claimed he rendered during Clinton's campaign for governor in 1990, the same year that

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Clinton said he would not run for President in 1992. Say claimed that Clinton owed him about $20,000 for campaign services, which probably boiled down to McIntosh *not* spoiling the campaign party.

Could be: it took Clinton till January of this year to pay back $100,000 owed to Perry County Bank, and Perry County is nowhere. At least Say is in Little Rock. Don't get me wrong about the Perry County Bank. After all, a friend of mine, Herby Branscum, owns it. Now Herby was appointed highway commissioner by Clinton before the big run. No complaints here, mind you. You see, Herby was instrumental in getting my sister-in-law elected County Judge of Perry County. Remember: all Arkansas life is interconnected.

Back to the Perry County Bank. People in Perry County don't really mind extending credit for a while longer than most folks. But Say don't extend much credit to nobody. Yet don't forget that the law of the land here is neighborliness. Whatever you feel compelled to do, do it with some friendly contagion. Why last summer while I was going to pick my kids up at Sunday school at Immanuel Baptist—Clinton's church—there was Say discharging his moral fervor by plastering every car windshield around the church with flyers recounting Clinton's moral failings in graphic depiction. The flyer included photos of Clinton's supposed mulatto, illegitimate son and xeroxed copies of Gennifer Flowers' *Penthouse* photos. Long ago I found it was best to preempt Say. Greet him heartily, with a smile, and you get back the warmest response possible: "How y'all doin'?" Crossing the big ethnic divide suddenly with another person can be elating, feeling like a member of a Sartrean *groupe en fusion*. Some of the brethren confront Say over his literature and Say responds in kind. Not me; I ask for the literature, thank him, and tuck it away before my kids see Ms. Flowers xeroxed. Besides, since we've had Chelsea over to our house and helped child-sit for her while her daddy and momma ran for the presidency, the kids might be upset to see moral charges lodged against her daddy.

What are the alleged "facts" about the pardons? According to Jewell in an interview on February 14, he had no plans whatsoever to pardon anybody when he became acting governor on Sunday, January 17. No one spoke to him about the pardoning. Not Clinton; not Tucker; not Say McIntosh, nor any of his kin.

So what did happen? Sometime, Jewell's not sure when, between Sunday and Wednesday of his four-day term as governor, he got to thinking about the inequities of the prison system in Arkansas: especially how it turned young, first-time offenders into hardened criminals; how it reflected the racism in Arkansas. Jewell observed the following on television: "One of the basic ingredients of society is racism, whether you admit it or not. Look around Arkansas: What do blacks own? run? Do they really own a first-class service station or fast-food store? No! The ugly face of racism can defeat you." Jewell then got to thinking about racial injustice as manifested in the prison system. "Our legal system is an unfair system. Fines and sentences depend on who you are." Actually, Jewell claims he acted under the guidance of divine providence: "I believe in the man upstairs. Whatever I did was guided by the man upstairs."

So what did divine providence provide Jewell that got him thinking about doing some pardoning? Well, it so happens that before Governor Tucker left for the inauguration he was reviewing some files from the parole board and, goodness, he may have left one of those files on his desk as he left town, meaning of course to return it unapproved to the board. This is by Tucker's own account, mind you, in a televised news conference. So, Jewell arrives in the governor's office, casts about for something to do and, mercy, discovers two files on convicts being recommended for clemency, one in jail, another on parole. Claims Jewell: "I did not decide before these files were on my desk to pardon anybody." Again, Jewell claims there were two files; Tucker admitted one.

Those two files got Jewell curious, so he sent for two more files. Now he had four. Guess it's better to mull over the inequities of the Arkansas prison system with four files in front of you than a measly two. He tried to recall whose files these were in the televised interview and could only recall three of the four names. Now, if providence played a hand in all this, it was certainly reasonable of Him to make sure the good acting governor didn't pardon Tommy McIntosh alone, because Say's hand in this would loom mighty large in the public mind and all hell would likely break out. What does Say's son Tommy have to say about it all? First off, Tommy was sentenced to jail for 50 years in 1987 for being caught in a van with two others and some cocaine. Tommy was 23 years old at the time. Was Tommy a young drug kingpin? Tommy denies this. If he was a drug kingpin then Tommy wants to know why "I'm the only kingpin that don't have a car, that don't have a house, or fancy rings on my fingers? No way I could have gotten 50 years on the first offense." Jewell maintains that Tommy's "sentence was too great for the crime. Who knows if he was set up? The sentence was too great because of whose son he was." Claims Say: "The sentence was about me!"

Say also claims that Clinton and Tucker prearranged the pardon, and that in return Jewell agreed to keep silent about the deal. In fact, despite some dispatched flyers, Say himself kept rather silent during the presidential election. He publicly denies there was any deal but told Max Brantley, a local newspaper editorialist, that Tommy's situation "has been taken care of."

Arkansas politics is indeed driven by negations. More is accomplished by what you don't know or do than by what you claim to know or do. It's good ole boy Southern politics and style, stretching across ethnic lines, to play down any air of pretense or knowledge. It's death in Arkansas politics to act like a Flannery O'Connor "innerlecshual." Jewell initially denied that he knew either the first names or crimes of those he pardoned. Smart guy. That ignorance was to downplay Tommy McIntosh's pardon. Tucker claims he knew nothing of this until his staff contacted him in Washington and warned him on the day before the actual pardons. Why didn't he contact Jewell at once to dissuade him? Well, Tucker went to bed thinking it was a "done deal," only to find out it wasn't done till the next day. And no one knows what Clinton knew. Why it's a downright historical coup, *n'est-ce pas*, that we know that King Louis XV knew what he knew of the four Arkansas pardons of 1756.

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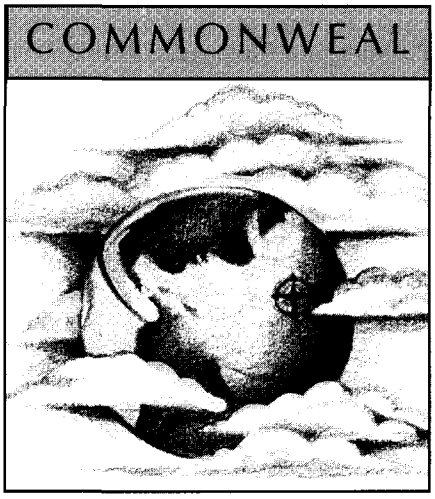

Anna Mycek-Wodecki

The Revolution in Waco

by Egon Richard Tausch

Torching the Constitution

A hundred years from now historians, if they are still permitted to research and write, will argue about when the United States started down the slippery slope to totalitarianism. Many Southern historians believe it began with the erosion of the U.S. Constitution occasioned by President Lincoln's disregard of that document and by the Reconstruction Era. Some historians point to the massive powers assumed by the federal government during the Progressive Era. Others might date the slide to FDR's "New Deal" or LBJ's "Great Society" programs. A few might even highlight Chief Justice John Marshall and his doctrine of judicial review. In truth, the path returning the United States to constitutional government was visible and could have been taken at any time after these periods, either by a conscientious government or by an American public sufficiently outraged.

But when a government uses massive physical force against its people, illegally and unconstitutionally, the power of the public and the extent of its outrage is tested. It is either found ultimately victorious over tyranny—as after the Boston Massacre and the Alamo—or intimidated, confused, and indifferent, as is rapidly becoming the case in the aftermath of the Waco Massacre. When the latter occurs, the future of a republic becomes predictably tragic.

What are the national and local purveyors of public knowledge doing in what they call their "quest for answers" about the events near Waco, Texas? They are demanding investigations as to whether David Koresh knew of the raid in advance, whether the ATF knew of his knowledge, and what tactical flaws ultimately resulted in the deaths of dozens of men, women, and children. The federal government, knowing that these are not the right questions, is dutifully complying, by limiting its investigations to these areas and by repeating, day after day, that the ATF attack was "an attempt to serve a warrant."

What are the known facts, what questions should be investigated and by whom, and what are the implications of the Waco Massacre for the policies, present and future, of our Republic? On February 28, 1993, approximately 150 people, armed with automatic weapons, grenades, and ladders, invaded and attacked a complex of buildings near Waco, Texas, which was inhabited by a religious group. The attackers killed at least five of the inhabitants, and the defenders killed four of the attackers.

Let's start with the uncontested facts. What was the justification for the initial assault, if any? We have been told that the attackers were part of the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF) and were attempting to serve a warrant on a member or members of the religious group. This is a very important allegation, on which *any* justification of *any* of the subsequent events depends.

Was there an attempt, however botched, to serve a warrant at all? Initially we were told by the government spokesman that the warrant was "sealed," but that the allegations in the affidavit involved possession of illegal weapons. When it was discovered that several persons in the complex, including David Koresh, had dealers' permits for those same weapons, issued by the selfsame ATF, the story changed.

Now, we were informed, the affidavit concerned alleged child abuse. When the release of dozens of children from the complex, their meticulous medical examinations, and their extensive interrogation by the feds revealed no signs of abuse, and when it was pointed out that the ATF never had any jurisdiction over abuse cases anyway, the government spokesman announced that the *real* intention of the raid was to prevent mass suicide. The government spokesman next changed the focus to the four dead agents and the supposed nuttiness of Branch-Davidians in general. Finally, after the slaughter, the warrant and affidavit were opened. Geraldo Rivera's grand opening of "Al Capone's Secret Vault" could not have been a greater anticlimax.

The 15-page, single-spaced affidavit, signed by ATF agent Davy Aguilera, is a mess, though it covers two years of investigation. At least half of it deals with how the affiant disagrees with Koresh's theology. It dwells for paragraphs on a nervous UPS deliveryman who feared that he had actually delivered weapons. The ATF affiant says he called the licensing department of the ATF and discovered that Koresh was not licensed to deal in firearms. (This was proven false, two days after the raid.)

The rest of the affidavit concerns third- or fourth-hand hearsay (once through two translators) about how Koresh *might* be able to convert his legal AR 15's and legal AK 47's into illegal automatic weapons, *if* he had the skills and equipment. The only expert witness is quoted as saying that everything Koresh had is used for legal, as well as illegal, purposes by gun owners (the affiant called this a "loophole in the law"). No one quoted in the affidavit had ever seen an automatic weapon in the complex—not even the ATF agent, Rodriguez, who lived there undercover as a Koreshian.

The affidavit cites some fourth-hand hearsay about the possibility of child molestation (but no mention of anyone who had witnessed any abuse). All that one child-protective agent could report after her thorough investigation inside the complex was that one eight-year-old boy

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said he wished he could grow up so that he could have a gun. Apparently, Koresh gave investigators who came to the compound a complete and peaceful tour and willingly answered questions.

The affidavit also misquotes the law so that it appears that materials which *could* form explosives (found in any large kitchen and all garden stores) are illegal. They are not, unless the *intent* to make a bomb is there, which is the *only thing the complaint or warrant alleges*, although no support for such intent is given in the affidavit. Moreover, according to the affidavit, all of Koresh's suppliers had been investigated, only to find that what they had, and had sent to Davidians, was legal and untouchable by the ATF (another "loophole in the law").

The most damning evidence in the affidavit was that Koresh "stated he thought gun-control laws were ludicrous," that he "believed in the right to bear arms but that the U.S. Government was going to take away that right," and that he showed the undercover investigator a videotape made by others which "portrayed the ATF as an agency who violated the rights of gun owners by threats and lies" (a portrayal that now appears to be a gross understatement). The conclusion of the affidavit was that Koresh lived in a "secret environment," and that it is "my experience that persons who acquire firearms, firearm parts, and explosive materials" live in such environments.

But, however stupid the affidavit and bungled the attempt, the ATF "was only trying to serve a warrant," right? Wrong. Ignoring the uncontested facts that local authorities had served warrants on Koresh before and had called him in for questioning with no problem, and that Koresh came into town regularly and peaceably for supplies, all of which was reported to the ATF by local authorities, the ATF continued to prepare for what could only appear to be a first-strike, all-out assault on the complex.

The following account of the events of the first fatal day is compiled from affidavits and televised statements of Davidian survivors, ATF members, local authorities, and media witnesses. On the morning of February 28, an ATF helicopter circled the complex and fired into the communal dining room, killing one Davidian at breakfast. Almost simultaneously, the ATF agents jumped out of their tarp-covered trucks in front of the complex and fired repeatedly at the front of the thin-walled buildings, through the windows, and at every Davidian in sight. Other ATF agents used their ladders to climb on the roof and throw grenades. *No one* approached the door. There was no ATF sound truck or bullhorn announcing a warrant, not to mention a simple cellular phone call to the complex. David Koresh came out of the front door and, unarmed, shouted "Stop! Stop!" and waved his hands over his head. He was then wounded twice. An elderly Davidian tried to drag him away but was killed, as were other exposed members elsewhere.

Koresh and other Davidians called 911 for help from the authorities. They talked to Sheriff Lynch of McLennan County, who in turn tried to contact the ATF by both radio and telephone to stop the shooting. The ATF radio operator failed to respond. The ATF telephone went unanswered. (According to the House subcommittee investigating the massacre, the tape of the frantic 911 phone call was edited, and critical parts of it were erased, apparently while it was in the possession of the FBI. Fortunately, the original is still in the possession of the local authorities.) At some time during this commotion the Davidians returned fire, killing four invaders and wounding 16. The ATF then withdrew and laid siege. This entire sequence of events is what the contemptible TV movie about the ordeal described as an "ambush" by Koresh.

Let's clarify the events for the slower members of the media: there was *no* attempt by the ATF to serve a warrant, just an illegal and bloody attack on American citizens. Texas law, as well as federal law, gives no protection to members of a law-enforcement agency, in or out of uniform, when, without having witnessed a felony in progress and not in "hot pursuit" of a fugitive, and without attempting to serve a warrant or placing anyone under arrest, they fire on a citizen who offers no direct threat. The victim has every *legal* right to return fire. Any deaths that occur in this exchange are laid at the door of the attacker.

Enter the FBI. But first a note to readers who are biased by their dislike of the laws or practices of Texas. It is the implied accusation of "stockpiling weapons" that makes the national anchorpersons all a-flutter with indignation against Davidians. Most, if not almost all, Texans own firearms. A large minority, if not a majority, of Texans have gun collections, meaning a dozen or more firearms: rifles, semi-automatic rifles (so-called assault rifles), shotguns, and pistols. I do myself, as do my neighbors and several friends.

Such ownership is, and always has been, protected by Texas law. Maybe Texas, unlike some states, can read and understand the Second Amendment. The Texas Constitution (officially approved by the United States government) is even more explicit: "Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State." This clause has consistently been interpreted by the Texas Supreme Court to include defense against governmental tyranny and to cover both military and civilian firearms. Stockpiling guns is more common in Texas than collecting stamps, butterflies, or baseball trading cards, all put together. Call this Texas gun-hoarding custom a "macho," "Bubba," or "Redneck" thing. I'm inclined to attribute it to long historical memories.

Texans remember our defense against Santa Anna and later against the Union Army, in the first of which our private "stockpiles" won our independence as a nation and in the second of which our "stockpiles" kept the Northern Army out of Texas until after the war, despite five all-out attempts at invasion. Our private "stockpiles" also helped Texas overthrow the Reconstruction governor long after carpetbag rule had been peaceably lifted in every other Southern state.

Koresh's group probably intended these weapons for self-defense, however many gun shows they had participated in and profited from. Did they have any reason to believe they might someday be illegally attacked? They had been before, by a rival group. This time it was by the federal government. Is that possibility of illegal or unconstitutional attack, rather than the sports of target and skeet shooting, perhaps the reason for the Second Amendment? Of course, Koresh's group was caught embarrassingly short of Howitzers and anti-tank missiles during the final assault.

Enter the FBI, who saw what we saw on TV, who knows the laws, who could have demanded to see the warrant and affidavit and then closed their briefcases and gone home to begin the pretrial investigation of the ATF leaders of the conspiracy. Instead, the FBI themselves laid siege to the Davidian victims and lent their services to the ATF cover-up,

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periodically holding silly and self-contradictory press conferences. The only fun part of the show was the spokesman's embarrassing theological blatherings, which were as ignorant, confused, obsessive, and boring as he said Koresh's were, though the spokesman offered them only in the hope of diverting Americans from the real issues.

According to all accounts, commonly reported in newspapers and never contradicted, the FBI was not called in by the local authorities, from whom they never asked permission. They threatened to arrest the local sheriff for interference. They arrested persons for "defaming the ATF"; Sheriff Lynch set them free. The FBI never even asked for a declaration of martial law, which might have given them some sort of legal authority. Then, after weeks of psychological warfare by glaring lights and deafening sound, the FBI attacked and smashed into a complex lit by kerosene lamps and candles, with tanks equipped with long-necked cranes and tear gas. During a windstorm. Surprise—fire engulfed the complex, killing almost everyone in it. Was it mass suicide? Was it killings by Davidian leaders? (Both of these possible endings were glorified in the TV mini-series *Masada*, about the Jews besieged by the Roman Army. And the Jews didn't have to listen to the amplified screeching of Buddhist chants 24 hours a day.) Or was it the kerosene lamps and candles that set off the fire? What difference does it make?

The entire federal operation, from beginning to end, was illegal, and horribly immoral. It slaughtered almost a hundred people. Not to mention violating nine of the ten amendments in our Bill of Rights. (That must be a record.) All we have by way of explanation is the already discredited FBI spokesman's word that Koresh "talked as though he wanted Armageddon to begin." If that were true, the ATF and FBI were apparently happy to oblige.

The final, and lamest, excuse by the FBI spokesman was that "the Davidians could have surrendered to us anytime they wanted." This reminds me of a rapist-killer I was once appointed as a lawyer to represent, whose defense was that "the slut could have given in to me anytime she wanted." I convinced him to plead guilty.

Incidentally, in a city like Waco, which is almost totally Southern Baptist, what is a "cult"? Jehovah's Witnesses? Methodists? Roman Catholics (led by a Pope with more spiritual power than Koresh ever aspired to)? My family is Anglican Catholic, a tiny denomination given to Elizabethan English, male priests, and hats on ladies in church. We require the ritualistic consumption of an addictive drug (communion sherry). We even engage in "cannibalism" (the Body and Blood of Christ). Are we a cult? Koresh, in his public statements before being censored and reinterpreted by the FBI, clearly stated that he was "the Christ, just as every one of us is the Christ, anointed by the Father." Does this mean that liberal churchmen like Episcopal Bishop Spong of New Jersey, who periodically echo this kind of meaningless bilge, all have Messiah complexes? Perhaps a "cult" is just any religious group that one disapproves of.

Also, did all of this begin because the ATF barely survived abolition under Reagan? Its appropriations, after all, were currently under review, and it hadn't had a good shootout since Al Capone. When James Higgins, the head of the ATF, appeared and testified before a congressional committee a few days after the raid, it was *not*, as most people assumed, to answer for Waco. The hearing had long been scheduled to investigate the usefulness of and appropriations for his Special Operations branch. Were the timing of the raid and unnecessary violence (and advance notice to the media) just political ploys staged to preserve Higgins' power and funding? Did almost a hundred Americans die for this? The *Houston Chronicle* recently obtained a tape of a conversation between Koresh and ATF negotiator Jim Cavanaugh a few hours after the initial raid, indicating again that Koresh wouldn't have resisted had the ATF agents given him a chance. "It would have been better if you just called me up or talked to me," Koresh said. "Then you all could have come in and done your work." Instead there is a bloody gunfight. Perhaps a tame service of warrant and quiet investigation by one or two agents wouldn't have served Higgins' purpose, especially if no illegal weapons were found.

As to who should investigate the Waco Massacre, I nominate the International Red Cross. They proved, in the midst of World War II, that our Soviet allies, and not the Germans, were responsible for the Katyn Forest Massacre of 10,000 Polish officers. The Treasury Department, Justice Department, and Congress will be as useless investigating Waco as the Soviet Secret Police were to the Katyn investigation.

The Treasury Department has already announced that its "fair and impartial" investigation of Waco is nearly completed and that it was undertaken with no preconceived notions, bias, or prejudices. Then way down in the last paragraph of the newspaper accounts of the announcement is a postscript by the Treasury spokesman: the investigation was conducted as a memorial to the four innocent, murdered ATF agents, who were only trying to serve a warrant. So much for impartiality.

At the very time of the Waco Massacre, several Los Angeles police officers were undergoing their (double jeopardy) trial for merely roughing up (not killing) Rodney King, a man seen committing a misdemeanor, caught in "hot pursuit," and possessing a long criminal record. Surely trials of the ATF and FBI leaders, including at least Higgins and Janet Reno, that resulted in swift justice and stiff Nuremberg-like sentences could help return us to constitutional government. Perhaps this is the only way for the public to understand that the federal government is dangerously out of control and that the Constitution of the United States is now a dead letter.

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Jobs, Politics, and Immigration

by Virginia D. Abernethy

Unemployment and underemployment are trends becoming more noticeable as the 20th century draws to a close. Eighteen million new jobs were created in the United States during the expansionary 1980's, but, ominously, structural unemployment—the seeming base level in our economy—was still redefined upward from 4.5 percent to 5.5 percent of the work force. Worse, new job creation fell far from this pace in the early 90's and remained sluggish even as the production of goods and services grew. All the while, the category of "discouraged worker," describing those who have ceased looking for work, rises uncounted. The root cause of these developments is, arguably, a rapidly growing population. More people means more workers. Some few contend that this bodes well for America in the long run. But there is room for doubt.

First, review some characteristics of labor. It is a factor of production; labor productivity puts an upper limit on the wage that can be paid without igniting inflation. In other respects labor is a commodity; wages, or the price paid for labor, respond to the law of supply and demand. Wages usually rise in a strong economy. The trigger is unemployment falling to near its structural level, which allows labor to command, as well as demand, higher wages.

Consider the decade and a half after World War II. The economy boomed, the labor supply did not expand, wages went up very, very fast, and the consumer market was strong. This was not too inflationary, however, because productivity also rose quickly: industry responded to expensive labor by substituting new technology and automation, which increased productivity. Almost everyone prospered. Most people thought easy times had come to stay and each generation would do better than the one before.

Too soon, the worm turned. A 1987 *Wall Street Journal* article identified a large *increase* in the supply of labor as the cause of stagnant real wages during the 1970's and 1980's. Baby boomers and women entering the labor force for the first time were depressing wages. When this temporary bulge was absorbed, the story went, real wages would rise again.

Historical demography supports the point that a tightening labor supply stimulates general prosperity, whereas a growing labor supply damps wages. Ronald Lee at Berkeley, studying 19th-century England, found that a 10 percent rise in the labor supply led to a 22 percent increase in rents (return on land or, broadly, return on capital) and to a 19 *percent decline* in wages. The picture that emerges is of the polarization of society into rich and poor, based largely on a change in the supply of labor.

Now turn to the labor supply in the United States. Is the general impression that it is growing quickly or slowly? Slowly? To be sure, the baby boomers are just about absorbed into the labor force, as are the middle-aged women who entered it during the 1970's. In 1987, indeed, a labor shortage, particularly among skilled workers, was predicted by the "executive summary" of *Workforce 2000*, released by the Hudson Institute of Indianapolis. The "executive summary" stated that, from 1987 to 2000, white males would account for only 15 percent of new entrants into the labor force. Every CEO in the country heard this number and knew its implication: the traditional source of skilled labor was drying up. The gap would have to be filled by women, minorities, and immigrants.

Almost immediately, however, some people noticed a mistake in the "executive summary." But the word about a correction never really got out. The true fraction of labor force entrants who are (will be) white and male is nearly 32 percent. The "executive summary" omitted the word "net." The intended message was 15 percent *more* white males are to enter the labor force than leave it (through attrition and retirement). This means that from 1987 to 2000 the economy and capital investment must grow at least 15 percent to absorb just the extra white males.

Add to this the extra black males and other minorities and the extra females—a very large change because of low female labor force participation in earlier generations—and the number of new jobs has to expand very fast indeed just to keep up with the supply of young American workers. In fact, nearly one million more young Americans enter than older Americans leave the labor force each year.

How well is the country doing with its growing supply of labor? A few sectors hold surprises. One-half of young black men are unemployed, and virtually all of them are in the unskilled sector. The cost of this unemployment (and related alienation) is significant, not only in the taxes and direct private sector money that it takes, say, to rebuild Los Angeles, but also in what it means to the American dream. What happened to integrating most people into mainstream America? And will this staggering unemployment creep upward into the next levels of education and skill? Maybe. Disappointed college graduates report that a bachelor's degree is worth very little in today's job market.

Science magazine reports that several hundred (out of fewer than 1,000) new Ph.D.'s in mathematics in 1991 could not find jobs; they were competing with Chinese students who had sought asylum and professionally established Russian mathematicians. Among the latter, *Science* reports, as many as 300 had sought employment in the United States within the previous two years. As recently as March 1993, 13 percent of mathematicians with Ph.D.'s were unemployed.

Engineers are experiencing the same. The 1990 Immigration Act tripled the number of visas for engineers and scientists. The rationale—the expected skilled labor shortage—is derided as "lies and fraud" by the president of the American Engineering Association (AEA); companies prefer to hire foreign engineers, he states, because they work for lower wages. The AEA is currently petitioning Congress to reconsider the 10 percent of visas set aside for skill-based immigration.

Congress should no doubt reconsider its entire legislative package concerning immigration. It should certainly reconsider the effect of immigration on unskilled Americans. Fully one-quarter of workers with less than a high school education are immigrants; the impact on America's own poor and minorities (including recent immigrants who now make the United States their home) can hardly be overestimated. New econometric studies are at last documenting the job displacement and decline in wages resulting from current immigration. In round numbers, over one million immigrants, refugees, and asylees enter *legally* each year; 90 percent of them have "family reunification"—not

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skills-based—visas. And an estimated half-million more enter without coming to the attention of the Immigration and Naturalization Service (INS) but intending to stay.

The population of the United States is growing by 58,000 people a *week*. Nearly half of that growth is immigration; some additional portion is due to children born to immigrants, who have significantly more children per woman than native-born Americans. The immediate impact of this on the labor force is significant, and down the road the numbers are immense. In the next 60 years the American population is set to grow 50 percent by Census Bureau projections and nearly 100 percent if one extrapolates our present growth rate.

Now, how does immigration relate to unemployment? The INS issues work authorization papers, either as "temporary work permits"—many of these to people who arrive in the United States without documentation of any kind—or as "green cards," which are issued to refugees and legal immigrants. In the *first six months* of 1992, 439,000 temporary work permits and 390,000 green cards were issued. Even if only 75 percent of all holders of green cards entered the labor market immediately, we still get 659,000 newly authorized foreign workers competing for the total number of new jobs. This very nearly matches the number of new jobs (864,000) that were created nationwide within the same period.

In all of 1992, the economy created well short of 2 million net new jobs while the potential labor force grew by nearly 1 million net new American workers, by 1.3 million legal immigrants, refugees, and asylees who received work authorization papers from the INS, and by approximately one-half million illegal foreign workers. Clearly, workers exceed jobs. Without immigration of any kind, the job market could come into balance by reabsorbing the unemployed, reengaging the "discouraged" worker, and inducing certain of the more productive older workers to postpone retirement.

But under present conditions, I need hardly say, native-born Americans, especially those just coming into the job market and particularly the least skilled, are having a tough time. An economic slowdown is hard enough to overcome, but our continuously and rapidly growing labor force, driven by the highest levels of immigration this country has ever seen, is putting paid to any prospect that the majority of the young or their children will enjoy the American dream.

No administration or government program, and no foreseeable private investment of the quantity needed, can expect to overcome unemployment in the face of 1.5 million immigrants every year. If the administration and Congress want to improve employment prospects for Americans, let them establish policy that limits immigration, from all sources combined, to under 200,000 a year. This level would about equal the annual voluntary flow out of America. Only then can unemployment cease to burden jobseekers and taxpayers alike, the consumer market regain strength, and joy return to the land.

Virginia D. Abernethy is the author of Population Politics: The Choices That Shape Our Future, *the editor of the bimonthly journal* Population and Environment, *and a professor of psychiatry (anthropology) at the Vanderbilt Medical School.*

The Trickle-Free Economics of Robert Reich

by Ralph R. Reiland

Robert Reich explains in "Clintonomics 101" in the *New Republic* that "every factor of production other than people and infrastructure is moving with ever greater ease across national boundaries." True, our airports and sewers don't usually pick up and leave the country, and not many Americans are heading for Ethiopia or Chile to strike it rich. More importantly, says Reich, and lucky for us, it's those very things that are stuck here—people and infrastructure—that are the keys to our prosperity: "Upon these two assets, the future standard of living of a nation's people uniquely depends."

The problem, according to Clintonomics, is that the greed and tax cuts of the Republicans have left us knee-deep in potholes and urban guerrillas. "Starved of tax revenues and confronted with a growing budget deficit," Reich argues, "the federal government has reduced support for child health, education, training and infrastructure by a third." Reich is getting so good at cooking the numbers that he should wear a chef's hat. A federal government that eats up one-fourth of the total income of the world's largest economy is hardly in danger of starving, and federal spending is up, not down, on children's programs and infrastructure.

Childhood immunization and infant mortality funding jumped 45 percent in real dollars between 1989 and 1993, from $6.7 billion to $9.7 billion. Head Start spending doubled from $1.4 to $2.8 billion in 1990 dollars in the same period, and expenditures at the Department of Education increased by $7 billion to $31.4 billion. At the same time, child nutrition programs expanded by 49 percent in real dollars to $9.7 billion, and food stamp funding grew from $14.9 billion to $27.1 billion, an 82 percent increase.

Marian Wright Edelman of the Children's Defense Fund says it's "a scandal" that every American child isn't fully immunized, and President Clinton calls for the government to buy all the childhood vaccines and supply them free to all children. It's a good idea—it's how we virtually eliminated polio three decades ago—and here in Pittsburgh we already do that. All immunizations are completely free to all families in the city and surrounding Allegheny County, regardless of income. Still, one-fourth of two-year-olds in the county are not fully immunized. Here, it's the parents, not the taxpayers, who too often drop the ball, and that's the real "scandal." In a country that still has a degree of individual responsibility left, every human problem doesn't mean that capitalism is evil or that America has failed or that a new government program is needed or that taxes are too low.

As with child health programs, Reich spins a tale of Republican underfunding when it comes to the infrastructure. He has become a true believer in the litany that the "12 years of neglect" caused everything from the L.A. riots to the hunger in Somalia to the collapse of the Chicago tunnels. President Reagan got instant blame from the Democrats when the Chicago River spewed 250 million gallons of water into the basements beneath the Loop. Reverend Jesse Jackson said, "This country is literally falling apart. Without vision, the Bible says, the

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people perish." Jerry Brown dropped in and saw a jobs program in the waters of Marshall Field's basement: "Don't tell me we can't put people to work, the pipes under Chicago are bursting."

The real story, as David Johnson of the *Chicago Tribune* later reported, had nothing to do with Republican budget cuts and everything to do with goofing off by the Democrat's patronage-bloated city work force:

> As a chronology of the events that led to the disaster revealed, at every step where they could have saved the day, city workers were loafing, dallying, or goofing off. The saga goes back to last spring, when a maritime construction company was awarded a $335,000 city contract to pound clusters of 50-foot-long wooden pilings into the river bottom around an old drawbridge. . . . The city engineer in charge of monitoring the job never made a final inspection of the site because he couldn't find a parking spot near the bridge. When an inspector eventually discovered the damage five months later, he took dramatic photos of the cracked tunnel wall, exposed pilings, and the leaking river silt, but didn't pick up his film for a week. It took another week and half a dozen meetings before someone decided to write a memo recommending that the tunnel breach be repaired. Then city officials balked at paying the repair costs—$50,000 more than the $10,000 originally estimated—and instead scheduled another round of meetings. . . . And the wall came tumbling down.

It wasn't country-club greed or low taxes that turned that small leak into a multi-billion-dollar flood. It was just one more case of us not getting our money's worth from the government. Our "contributions" to the public sector weren't too small—they were too large and too squandered.

Reich tells us that infrastructure spending is low and declining when it's actually bloated and expanding. Federal spending on highways and airports increased by 19 percent and 38 percent respectively in the last four years in real dollars. The same is true for transit and HUD spending, up 23 percent and 52 percent from 1989 through 1992. Still, even with the need to cut spending and reduce the deficit, infrastructure has become the mantra of the Clintonites, with a steady drumbeat for fiber-optics and more roads. This time, we're asked to have faith that higher taxes will go for more than eight guys standing around a pothole.

What we have here is a con job—a fake infrastructure crisis based on fudged numbers, like JFK's missile gap. The bottom line in Clinton's program is a $16 billion increase in infrastructure spending for next year that eats up the entire proposed $10 billion annual tax increase on top income earners and all of the proposed $6 billion in new corporate taxes. Does anyone outside of Harvard or North Korea think it will "grow the economy" to transfer economic decision-making and all these assets from the most successful people in the private sector to the amateur central planners in the White House?

With Head Start, Clinton proposes to double its spending to $6 billion by 1996, in spite of the fact that its own founder, Dr. Edward Zigler of Yale, says it's now so mismanaged and unproductive that we should just shutter one-third of its centers. Winston Churchill said, "Some see private enterprise as a predatory target to be shot, others as a cow to be milked, but few see it as a sturdy horse pulling the wagon." Reich can't see the horse. He can't see why we need private entrepreneurs to innovate and risk and invest when those in the faculty lounge can do everything better.

Reich says, "The investments of wealthier Americans no longer trickle down to the rest of the American people." If that's true, if nothing trickles down, then why does he support the tax credits that attract new business to the inner city? Isn't the goal that a new pizza shop owner and auto body shop hire a dozen jobless kids and that what trickles down is less poverty, less crime, less drug dealing, and more self-reliance? In the 1980's, did Reich notice the 76 percent jump in new business investment in real dollars and the 20 million new jobs? Didn't the jobs trickle down from those investments? In the Reich paradigm, a politically correct trickle is any spending by the government, while an incorrect trickle is any claim that anything positive can flow from the private sector.

"The success of American capitalism no longer depends on the private investments of highly motivated American capitalists," says Reich. So, for the first time, it no longer matters if we demoralize the ambitious and destroy the profits in the private sector. The government can get wealth from taxes and direct investments from the Oval Office and the Labor Department. Bullet trains and Federal Infant Stimulation Centers can trickle down, and the President can tell us that we are no longer alone.

Ralph R. Reiland is an assistant professor of economics at Robert Morris College in Pittsburgh.

Academic Snobbery

by Jacob Neusner

It Can't Happen Here

"Different strokes for different folks" means, in academic language, "We have our own culture, so bug off." Europeans tell this to Americans who are curious about native habits. I remember that while teaching at Frankfurt University in 1991 I commented in a memo to colleagues on students who don't do any reading or preparing for classes and on professors who don't talk to anybody anyhow. In reply, a colleague on the theological faculty there told me, "Well, we have our own academic culture, and, anyhow, now I won't have supper with you." I hadn't known he was planning to; neither had he.

While a Visiting Fellow at Clare Hall, Cambridge University, last year, I saw a copy of a letter that I would have supposed no circle, however tightly closed, would have wanted sent from its midst Write it to feel better, but then trash it—everybody knows that! It was a response from a woman at a research institute to a letter from a man with whom she had spent some years in graduate seminar. The man had written to invite her out for supper; they had published books on similar subjects, and he wanted to talk to her about a problem of common interest. After making fun of his name and saying she couldn't even remember him, she declined the invitation in the following manner:

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I probably meant to ask around about you but forgot. You are probably right to think that I have very little spare time. What I do have I would rather spend with my neglected friends than dining with a stranger. You presumably know why you want to have a "meal date" with me, but what could be my reason?

There are much less awkward ways of making an acquaintance than challenging her sight unseen to a dinner. A whole evening in no company but yours? If you were charming enough to warrant the expenditure of time and energy, some Cambridge hostess would have made the most of you by now. Then you would be the one with a full dance card.

When I chanced across this gruesome document, I thought to myself: that couldn't happen in America. No American professor could be so self-important, none would leap at the chance to insult a perfectly innocent friend of times past, and none would actually write up and mail evidence of some gray morning's foul mood. Why bother?

But then I wondered—why not? After all, the academy thrives on hierarchy and lusts after occasions to show who's who. We live by selling prestige; education is only our by-product. For instance, a friend of mine who is a highly accomplished neurologist, head of all sorts of medical services in hospitals, told me that the one way he knows for sure he's really first-rate is that he went to Harvard—40 years ago.

Brown University made itself a hot school by taking in discards, the stupid children of the glitzy; Harvard grabs the smart ones, the next go to Yale or Princeton. But to send your kid to college with the kid of someone you've heard of—that's worth the extra $15,000 a year that Brown charges over the local state university. So they make out like bandits with an inexpensive, unaccomplished faculty. Education is not what it's about when you pay $25,000 a year for what you could get for $10,000.

Lest my Harvard friend be thought exceptional, a Harvard freshman recently spent an evening telling me about the famous professors whose lectures she'd attended. But when I asked her what they had taught her and what questions she'd asked them, she said that, at Harvard, that's not how it works. "Anyhow, we're the best." So, I suppose, Cambridge in England is not the only place where people could write, "If you were charming enough . . ."

Then again, I thought back to my year at Princeton, where at the Institute for Advanced Study I met lots of people very pleased with themselves for having an office near Einstein's. When I asked some questions about what they'd recently done in their fields—social science, history, etc.—their paltry answers stimulated a little essay about why Franciscans can't talk to birds. St. Francis could talk to birds but the Franciscans couldn't, I argued, because you can't institutionalize genius. That won me remarkably few friends at Princeton.

When, early on at Princeton (before I wondered in print whether the emperor might be a bit underdressed), I asked one of the permanent folk for supper with some friends, his reply was, "Well, of course, no—I can't . . ." followed by some incomprehensible mumbling. I hadn't been made the most of by some Princeton hostess. When a friend, an IAS member in astrophysics, asked a permanent IAS Professor X for lunch, the latter's secretary replied, "Mr. X doesn't make luncheon appointments with Members of the Institute for Advanced Study, but if you see him at lunch, you can sit down at the table." "Bow, bow, ye lower middle classes, bow, bow, ye tradesmen and ye masses."

Don't get me wrong. Both Cambridges are marvelous places, because each has a world-class library; and Madame "a whole evening in no company but yours" didn't win any popularity contest at the English Cambridge. Everyone who saw her letter said, "Oh, her." So she's not going to win any elections to office in her precinct, that's clear.

And anyone fortunate enough to spend some time at the Institute for Advanced Study or at Clare Hall, Cambridge, its English counterpart, which does everything right that is done wrong at Princeton, knows that those of us for whom they invent research institutes come to daydream and think up problems to solve—not to get invited by Princeton or Cambridge hostesses. They don't like our suits, we don't like their perfume—or their conversation. Ray Monk, the biographer of Wittgenstein, says about Professor Gödel in his years at the Institute for Advanced Study, "The Princeton hostesses avoided him." They probably thought they'd ruined his life. Meanwhile, mathematics was reinvented, at IAS, by their outcast.

The point is, the academic world thrives on snobbery. It glories in its honors, prizes, titles, ribbons, and strange medieval costumes. It thinks its controversies are *controversies* and conducts bitter disputes over honor, prestige, or policy (who sits in which chair on what afternoon). A great writer told me he doesn't accept honorary degrees—"You just have to sit in the sun for a long afternoon watching other people's children get degrees in exchange for a piece of rayon"—but, then, he's not a professor. Only in the academy can someone write, "You presumably know why you want to have a 'meal date' with me, but what could be my reason?" In the real world, people don't say things like that to one another. They don't need to. Here, in the academy, where the stakes are so low, people sink beneath contempt.

Jacob Neusner is Distinguished Research Professor of Religious Studies at the University of South Florida.

LIBERAL ARTS

POLYNESIAN P.C.

Political correctness is alive and well in Hawaii, as indicated by an article in the *Honolulu Advertiser* last June. It seems the deputy prosecutor there, Maurice Arrisgado, was sanctioned by circuit judge Marie Milks for "sexist and racist" remarks he made during a murder trial earlier this year. Milks apparently objected to Arrisgado's statement that it was not unusual for the defendant in this case to have been driving in his underwear. Arrisgado, who is half-Filipino, had said in his closing argument, "What's so odd about that? It's the Filipino bathing suit. . . . Big deal." Milks also called Arrisgado sexist for assuming a female postal service worker was a man: during jury selection he had used the term "mailman" when referring to a female coworker of a member of the jury pool. Arrisgado was fined $125 for his offenses.

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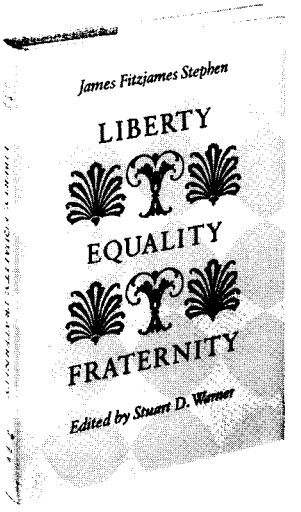

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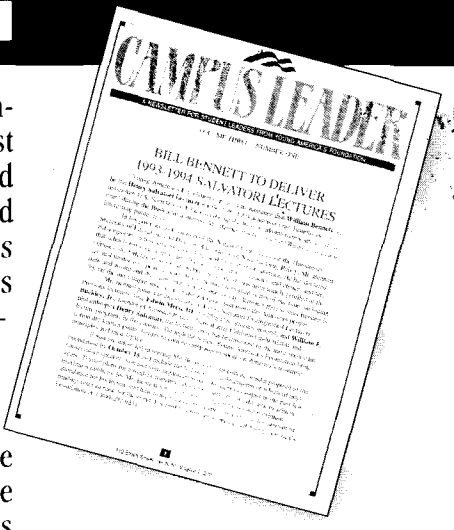

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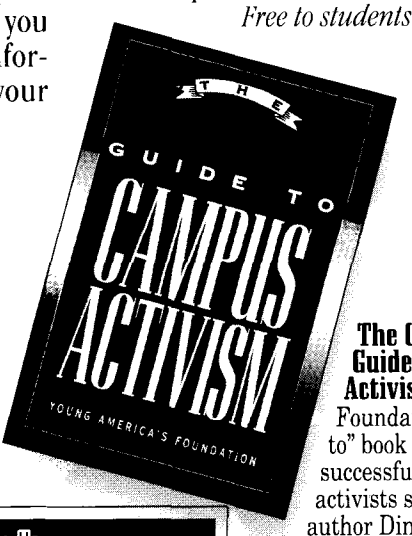

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